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Chapter 6

Human Rights

A. GENERAL

1. Country Reports on Human Rights Practices

On April 8, 2011, the Department of State released the 2010 Country Reports on Human Rights Practices. The Department of State submits the document annually to Congress in compliance with §§ 116(d) and 502B(b) of the Foreign Assistance Act of 1961 ("FAA"), as amended, and § 504 of the Trade Act of 1974, as amended. These reports are often cited as a source for U.S. views on various aspects of human rights practice in other countries. The reports are available at www.state.gov/q/drl/rls/hrrpt/2010 ; Secretary of State Hillary Rodham Clinton's remarks on the release of the reports are available at www.state.gov/secretary/rm/2011/04/160363.htm.

2. Periodic Report to the UN Committee on Human Rights Concerning the International Covenant on Civil and Political Rights

On December 30, 2011, the United States submitted the Fourth Periodic Report of the United States of America to the UN Committee on Human Rights Concerning the International Covenant on Civil and Political Rights ("ICCPR" or "Covenant"), available at www.state.gov/j/drl/rls/179781.htm#iii. As explained in the introduction to the Fourth Periodic Report, the United States followed the guidelines of the Human Rights Committee in terms of the form and content of the report, which supplements information provided in the U.S. Initial Report of 1994 and information provided in the U.S. combined Second and Third Periodic Report of 2005. See *Cumulative Digest 1991-1999* at 873-78 and *Digest 2005* at 258-300 for background on previous U.S. periodic reports.

Paragraph 4 in the introduction to the report explained that the report reflects U.S. consideration of the views of the Committee and civil society:

In this report, the United States has considered carefully the views expressed by the Committee in its prior written communications and public sessions with the United States. In the spirit of cooperation, the United States has provided as much information as possible on a number of issues raised by the committee and/or civil society, whether or not they bear directly on formal obligations arising under the Covenant. During preparation of this report, the U.S. Government has consulted with representatives of civil society and has sought information and input from their organizations. Civil society representatives have raised a variety of concerns on many of the topics addressed in this report, a number of which are noted in the text of the report. The United States Government has also reached out to state, local, tribal, and territorial governments to seek information from their human rights entities on their programs and activities,

which play an important part in implementing the Covenant and other human rights treaties. Information received from this outreach is referenced in some portions of the report and described in greater detail in Annex A to the Common Core Document.

The report is comprehensive and covers a wide range of subjects, including law and practice in the United States to protect freedoms of speech, religion, association, peaceful assembly, non-discrimination, and privacy. It also addresses liberty of movement, due process and fair judicial procedures, and equality under the law. The report also covers the rights to be free from arbitrary arrest or detention, torture, cruel, inhuman, or degrading treatment or punishment, and slavery or involuntary servitude. Other subjects addressed by the report include expulsion of aliens and protection of children.

3. Human Rights Council

a. Overview

The United States participated in three regular sessions of the Human Rights Council in 2011. The Council convened for its 16th session in March. For U.S. statements and positions at the 16th session, see <http://geneva.usmission.gov/taq/16th-session/>. U.S. accomplishments at the 17th session, which concluded on June 17, are also described on the website of the U.S. Mission in Geneva at <http://geneva.usmission.gov/2011/06/21/u-s-accomplishments-at-u-n-human-rights-council%E2%80%99s-17th-session/>. Key accomplishments of the United States at the 18th session, which concluded on September 30, are summarized at <http://geneva.usmission.gov/2011/10/03/accomplishments-unhrc18/>.

On June 17, 2011, John F. Sammis, U.S. Deputy Representative to the Economic and Social Council (“ECOSOC”), provided an explanation of the U.S. vote on a resolution in the General Assembly on the Human Rights Council 2011 Review. The U.S. voted no because of its unfavorable view regarding the process and outcome of the Human Rights Council Review, a process authorized in the General Assembly resolution that established the Council in 2006. U.N. Doc. No. A/RES/60/251. Mr. Sammis’ statement is excerpted below and available at <http://usun.state.gov/briefing/statements/2011/166477.htm>.

* * * *

Thank you, Mr. President. In Geneva and New York, the United States has repeatedly urged our fellow members to join us in conducting a thorough, comprehensive review of the Human Rights Council that would significantly improve its ability to meet its core mission: promoting and protecting human rights.

Unfortunately, the Geneva process failed to yield even minimally positive results, forcing us to dissociate from the outcome. We appreciate the work that the co-facilitators have done in New York over the past months, but the final resolution before us also fails to address the core problems that still plague the Human Rights Council. We deeply regret that this opportunity has been missed. The United States has therefore voted “no” on the resolution.

The Council has had many significant achievements in recent weeks; including a historic resolution highlighting the human rights abuses faced by lesbian, gay, bisexual, and transgender persons around the world, a special session on Syria, the Commission of Inquiry in Libya, and the historic creation of a Special Rapporteur to investigate human rights violations in Iran. But the Council's effectiveness and legitimacy will always be compromised so long as one country in all the world is unfairly and uniquely singled out while others, including chronic human rights abusers, escape scrutiny.

The gravest of the Council's structural problems remains its politicized standing Agenda Item 7 on Israel. No member state during this Review has been able to explain how Item 7 is consistent with the principles clearly outlined in the resolution that established the Human Rights Council: "impartiality, non-selectiveness, and balance." This Review should have eliminated this unfair and unbalanced Agenda Item and instead ensured that all member states, including Israel, are treated on an equal and impartial basis. The Review is over, but this struggle is not. My government will continue to fight to remove this item and the biased and unfair resolutions that flow from it.

This Review also failed to tackle another fundamental issue: Council membership. The Council discredits, dishonors, and diminishes itself when the worst violators of human rights have a seat at its table. During the Review in New York, the United States put forward a proposal to ensure that GA members have real choices in Human Rights Council elections by calling on all regional groups, including our own, to run competitive slates. This was rejected out of hand. We were also dismayed that another much more modest proposal, which simply called on candidate states to hold an interactive dialogue about their human rights records with member states and civil society groups, was also blocked. These failures to address the critical problem of membership do a serious disservice to the Council and to the brave men and women around the world standing up for their universal rights. Let there be no doubt: membership on the Human Rights Council should be earned through respect for human rights, not accorded to those who abuse them.

* * * *

b. U.S. Universal Periodic Review

In 2011, the United States concluded its first Universal Periodic Review ("UPR") by making both written and oral submissions to the UN Human Rights Council. The United States submitted its report in connection with the UPR in 2010. A Working Group of the UPR made 228 recommendations to the U.S. based on its review of the report. See *Digest 2010* at 202-08 for excerpts from the U.S. report and the initial response of the U.S. to the recommendations of the Working Group. On March 4, 2011, the United States presented its written response to the 228 recommendations of the Working Group, grouping the recommendations into ten categories and identifying those which enjoy the support of the United States, those which enjoy U.S. support in part, and those which do not enjoy U.S. support, also providing a short explanation in many cases. The U.S. submission also included the following explanation of the decisions. The submission can be found in full at www.state.gov/g/drl/upr/157986.htm.

* * * *

3. What it means for a recommendation to enjoy our support needs explanation. Some recommendations ask us to achieve an ideal, e.g., end discrimination or police brutality, and others request action not entirely under the control of our Federal Executive Branch, e.g., adopt legislation, ratify particular treaties, or take action at the state level. Such recommendations enjoy our support, or enjoy our support in part, when we share the ideal that the recommendations express, are making serious efforts toward achieving their goals, and intend to continue to do so. Nonetheless, we recognize, realistically, that the United States may never completely accomplish what is described in the literal terms of the recommendation. We are also comfortable supporting a recommendation to do something that we already do, and intend to continue doing, without in any way implying that we agree with a recommendation that understates the success of our ongoing efforts.

4. Some countries added to their recommendations inaccurate assumptions, assertions, or factual predicates, some of which are contrary to the spirit of the UPR. In such cases, we have decided whether we support a recommendation by looking past the rhetoric to the specific action or objective being proposed. When we say we “support in part” such recommendations, we mean that we support the proposed action or objective but reject the often provocative assumption or assertion embedded in the recommendation.

* * * *

On March 18, 2011, State Department Legal Adviser Harold Hongju Koh made an oral presentation to conclude the United States’ first UPR. Excerpts follow from Mr. Koh’s statement, which can be found in full at <http://geneva.usmission.gov/2011/03/18/us-upr-adoption>.

* * * *

We have found the Universal Periodic Review a useful tool to assess how our country can continue to improve in achieving its own human rights goals. Civil society has been involved in each and every step of our UPR: from an unprecedented series of a dozen listening sessions that involved representatives of local and national civil society organizations as well as hundreds of citizens from communities across our country, to the Town Hall gathering for civil society held here last November in Geneva, and since then our Federal agencies have held numerous meetings with civil society to discuss our response to the many recommendations.

* * * *

When we presented our initial report last November, we received 228 recommendations. We have considered the substance of each and every one of the recommendations, even those whose tone suggests they were not offered in a constructive spirit. While our written submission provides a specific response to each recommendation, in my time today, let me discuss the ten

thematic areas these recommendations cover, and review significant changes that have occurred since our report last November.

First, we support many recommendations concerning civil rights and discrimination. . . . Our government has taken important recent steps in this regard, notably enactment on December 22, 2010, of the Don't Ask, Don't Tell Repeal Act, which will allow gay men and women to serve openly in our military. . .

* * * *

In a second area, criminal justice, the United States continues to work . . . to ensure protection under our Constitution and laws of the rights of those accused of committing crimes and held in prisons or jails. We set and enforce high standards of conduct for law enforcement personnel. In New Orleans, the Civil Rights Division recently secured convictions against police officers who engaged in misconduct in the wake of Hurricane Katrina. . . .

About 25 countries . . . also raised capital punishment as an issue of concern. While we respect those who make these recommendations, as I noted last November, they reflect continuing differences of policy, not differences about what the rules of international human rights law currently require. To those who desire as a matter of policy to end capital punishment in the United States—and I count myself among those—I note the decision made by the government of Illinois on March 9 to abolish that state's death penalty.

In a third area, the rights of indigenous peoples, the United States recognizes past wrongs and has committed itself to working with tribal governments to address the many issues facing their communities, including two particular recommendations. . . .

At his second White House Tribal Nations Conference last December, President Obama . . . announced the United States' support for the UN Declaration on the Rights of Indigenous Peoples, and issued a statement detailing U.S. support for the Declaration and ongoing work on Native American issues. His announcement capped a year in which the President had directed that consultations with tribal officials be reinvigorated throughout the U.S. Government.

Civil society and countries . . . made recommendations to us concerning a fourth area: national security. . . .

. . . [O]thers made recommendations about the Guantánamo detention facility. As the White House indicated last Monday, President Obama remains committed to closing that facility, although that will clearly take more time, due to restrictive legislation and complex politics. As this effort continues, we are committed to ensuring that all practices on Guantánamo fully accord with international law. On March 7, 2011, the President announced five steps reaffirming the framework first outlined in his 2009 National Archives Speech, to ensure we have a lawful, sustainable, and principled regime handling Guantánamo detainees consistent with our national security interests and our national values. The first element is a continued commitment to civilian trials in Federal courts . . . The second element is a resumption of prosecutions by military commissions, which had previously been suspended. Third, we continue efforts to lawfully and safely transfer detainees from Guantánamo. Fourth, the President formalized a process of periodic review, to ensure that individuals on Guantánamo are detained only when both lawful and necessary to protect U.S. security. Fifth and finally, we reaffirmed our commitment to humane treatment of detainees in our custody by announcing that the United States will seek advice and consent to Additional Protocol II of the Geneva Conventions and will

also—out of a sense of legal obligation – adhere to the humane treatment and fair trial safeguards in Article 75 of Additional Protocol I in international armed conflicts.

* * * *

In a fifth area, immigration, we accepted many recommendations . . .

In keeping with commitments relating to our status as party to the 1967 Protocol relating to the Status of Refugees, our government is reviewing its handling of emergent refugee cases to improve accessibility and efficiency in the program. Last December, the Department of Homeland Security improved accessibility of care for immigration detainees, by simplifying the process for detainees to receive authorized health care. And in January, the Department improved its procedures for handling, investigating, and correcting complaints regarding all kinds of civil rights issues. In 2010, the Department of Homeland Security provided 10,000 victims of crime and over 9,000 of their immediate family members with the opportunity to work and live permanently in the United States.

In a sixth area—economic, social, cultural, and environmental rights—...local, State, and Federal governments in the United States continue to protect the environment in which we live and to take significant action to address what President Roosevelt called “freedom from want.”

...

In a seventh area—workplace protections and the fight against human trafficking—the United States has long been a leader. . . . The U.S. Customs and Border Protection agency launched the “No Te Enganes” (Don’t Be Fooled) media campaign in Guatemala, El Salvador, and Mexico, which offers information on the dangers of human trafficking and advises how to avoid becoming a victim. Last year the Department of Justice prosecuted its highest annual number of human trafficking cases ever, including one involving more than 400 victims. We continue to address worker protections in countless ways, including through the President’s Equal Pay Taskforce to strengthen our response to wage differences between men and women, the Justice and Equality in the Workplace Program, and joint enforcement and education campaigns focused on civil rights of immigrant workers.

We are committed to an eighth goal as well—robust domestic implementation of our international human rights obligations. . . .

As a party to several human rights treaties, the United States is bound to comply with its obligations at Federal, State, and local levels. Under our Constitution and federal system of government, the different levels and branches of our government ensure a comprehensive web of protections and enforcement mechanisms that reinforce our country’s ability to guarantee respect of human rights.

The ninth and largest group of recommendations that we received concerned ratification of treaties and other international instruments. . . . [T]he Administration has pushed for positive Senate action on a number of human rights and other treaties that afford humanitarian protection, and will continue to do so. As I have noted earlier, eleven days ago the Administration announced its intent to seek, as soon as practicable, Senate advice and consent to ratify Additional Protocol II to the 1949 Geneva Conventions. . . . The U.S. also declared that, out of a sense of legal obligation, it will treat the principles set forth in Article 75 of Additional Protocol I as applicable to any individual it detains in an international armed conflict, and expects all other nations to adhere to these principles as well.

Tenth and finally, we address together a number of the recommendations made at the UPR that did not fit into other categories. As our written report says, we do not support recommendations that urged particular action in pending judicial cases. Nor do we support certain other inappropriate or politically motivated recommendations. Despite some countries' desire to use the UPR for their own political ends, we have worked, with respect for the process, to consider the merits of each and every one of the 228 recommendations made to us, and to respond honestly to each.

* * * *

c. Work of Special Representative: Guiding Principles on Business and Human Rights

In June 2011, at the UN Human Rights Council's 17th Session, the United States worked with the Government of Norway to pass a resolution that welcomed the work of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, Professor John Ruggie of Harvard University. U.N. Doc. A/HRC/RES/17/4. Professor Ruggie developed the Guiding Principles on Business and Human Rights and built support for them among governments, corporations, and civil society stakeholders. The resolution created a working group of five independent experts and established a forum on business and human rights to discuss trends and challenges in implementing the Guiding Principles. The June 16, 2011 statement of Daniel Baer, Deputy Assistant Secretary of State for Democracy, Human Rights and Labor, on the resolution and the Guiding Principles is set forth below and available at <http://geneva.usmission.gov/2011/06/16/humanrightsandtransnationalcorps/>.

* * * *

The United States is pleased to cosponsor this resolution. The United States would like to thank and congratulate the Special Representative for the important progress he has made on this challenging issue, and express our support and commitment to working to make the vision of the Guiding Principles a reality where it matters most—on the ground for people and businesses. As the culmination of several years of work, the Guiding Principles provide a focal point for corporations, States, civil society and other actors as they work to strengthen their respective approaches to the issue of business and human rights.

In highlighting the importance of the Guiding Principles, we also want to take this opportunity to emphasize the essential foundation of the human rights system that remains an important backdrop for the Special Representative's work, namely, State obligations under human rights law with respect to their own conduct. In States that violate human rights, it will be more difficult for businesses to respect those rights—because domestic law may require actions inconsistent with internationally recognized human rights, because State practices encourage businesses to take actions that undermine the enjoyment of human rights, or because States involve businesses in their own human rights violations. In contrast, States that respect

human rights pursuant to their international legal obligations are more likely to create environments in which businesses are less likely to take actions that might undermine the enjoyment of human rights.

As the Guiding Principles remind us, it is important for States to govern justly and effectively, such that individuals are protected not only from misconduct by the State but also from non-State actors, including business enterprises. Our conviction regarding the State “duty to protect” is grounded in States’ moral and political imperative to engage in good governance, including by addressing properly acts of abuse by private actors. International human rights law tells us that, in certain circumstances, a State’s obligations can be implicated by private conduct, but we also have a solemn imperative as governments to provide for and improve the well-being of our populations, even where our obligations under international law do not require it.

While recognizing that the Guiding Principles themselves touch on certain unsettled issues that arise in a broader context, the United States believes that the Guiding Principles provide a valuable, important and complete framework for working through a wide range of challenges. We look forward to continuing to work with all stakeholders on their implementation with an eye to our ultimate goal: Improving the lives of people around the world.

* * * *

d. Actions regarding Libya

(1) Special Session

On February 25, 2011, the Human Rights Council convened a special session on Libya where it established a commission of inquiry on Libya. Secretary of State Hillary Rodham Clinton addressed the Council on February 28, 2011. Her remarks are excerpted below and available at www.state.gov/secretary/rm/2011/02/157412.htm.

* * * *

Today the world’s eyes are fixed on Libya. We have seen Colonel Qadhafi’s security forces open fire on peaceful protestors again and again. They have used heavy weapons on unarmed civilians. Mercenaries and thugs have been turned loose to attack demonstrators. There are reports of soldiers executed for refusing to turn their guns on their fellow citizens, of indiscriminate killings, arbitrary arrests, and torture.

Colonel Qadhafi and those around him must be held accountable for these acts, which violate international legal obligations and common decency. Through their actions, they have lost the legitimacy to govern. And the people of Libya have made themselves clear: It is time for Qadhafi to go—now, without further violence or delay.

The international community is speaking with one voice and our message is unmistakable. These violations of universal rights are unacceptable and will not be tolerated. This Council took an important first step toward accountability on Friday by establishing an independent commission of inquiry.

On Saturday in New York, the United Nations Security Council unanimously adopted a resolution imposing an arms embargo on Libya, freezing the assets of key human rights violators and other members of the Qadhafi family, and referring the Libyan case to the International Criminal Court.

Tomorrow, the UN General Assembly should vote to accept the recommendation to suspend the Qadhafi government's participation here in the Human Rights Council. Governments that turn their guns on their own people have no place in this chamber.

The Arab League deserves our praise as the first multilateral organization to suspend Libya's membership—despite the fact that Libya was serving as the Arab League Chair. We hope to see our friends in the African Union follow suit.

We all need to work together on further steps to hold the Qadhafi government accountable, provide humanitarian assistance to those in need, and support the Libyan people as they pursue a transition to democracy. Today, I've had the privilege of consulting with a wide range of colleagues here in Geneva and President Obama is meeting with UN Secretary General Ban Ki-moon in Washington. We will continue coordinating closely with our allies and partners.

The United States has already imposed travel restrictions and financial sanctions on Qadhafi and senior Libyan officials. We have frozen assets to ensure that they are preserved for the Libyan people. And we have halted our very limited defense trade with Libya. We are working with the United Nations, partners, allies, the International Committee of the Red Cross and the Red Crescent, and other NGOs to set up a robust humanitarian response to this crisis.

As we move forward on these fronts, we will continue to explore all possible options for action. As we have said, nothing is off the table so long as the Libyan Government continues to threaten and kill Libyans.

Ultimately, the people of Libya themselves will be the ones to chart their own destiny and shape their own new government. They are now braving the dictator's bullets and putting their lives on the line to enjoy the freedoms that are the birthright of every man, woman, and child on earth. Like their neighbors in Tunisia and Egypt, they are asserting their rights and claiming their future.

Now, while the circumstances in Egypt, Tunisia, and Libya are each unique, in every case the demand for change has come from within, with people calling for greater civil liberties, economic opportunities' and a stake in the governance of their own societies.

* * * *

Recent days have underscored the importance of the freedom of expression, whether it's in the public square, through the press, or on the internet. Brave journalists have broadcast images of repression around the world, and the young people of Tunisia and Egypt have shown everyone what a force for democracy, the open exchange of ideas, can be.

A vibrant civil society is also an indispensable building block of democracy. And not only in the Middle East but around the world, citizen activists and civic organizations are emerging as strong voices for progress. They help develop solutions to tough problems. They hold governments accountable. They empower and protect women and minorities. The United States is committed to broadening our own engagement with civil society, and we urge leader and governments to treat civil society, as partners, not adversaries.

There also must be for transitions to thrive a commitment to make economic opportunity available to all. Human rights, democracy, and development are inextricably linked and mutually

reinforcing. We have seen how inequity and lack of economic opportunities drive people into the streets. So to earn the confidence of one's own people, governments have to deliver on the promise of improved lives.

* * * *

The Human Rights Council was founded because the international community has a responsibility to protect universal rights and to hold violators accountable, both in fast-breaking emergencies such as Libya and Cote d'Ivoire, and in slow motion tragedies of chronic abuse, such as Burma and North Korea. We saw this Council at its best on Friday, when it took decisive action on Libya. We saw it in December's Special Session on Cote d'Ivoire, where the situation is increasingly dire and there's been a large spike in violence. We must continue sending a strong message to Laurent Gbagbo that his actions are unacceptable, and the international community must keep up the pressure.

* * * *

Make no mistake, this popular wave for reform is spreading, not receding. Each country is unique, but many of the concerns that drove people into the streets and squares of the Middle East are shared by citizens in other parts of the world. Too many governments are hobbled by corruption and fearful of change. Too many young people cannot find jobs or opportunities. Their prospects are shaped more by who they know than by what they know or what they can dream. But it is not my mother's or even my world any more. What has happened with new technologies of the 21st century means that young people know everything that is going on everywhere, and they no longer will tolerate a status quo that blocks their aspirations.

Young people in the Middle East have inspired millions around the world, and we celebrate what some are rightly calling the Arab Spring. This is a hopeful season for all humanity because the cause of human rights and human dignity belongs to us all.

So for leaders on every continent, the choice becomes clearer day by day: Embrace your people's aspirations, have confidence in their potential, help them seize it, or they will lose confidence in you.

Those of you who were here on Friday, and many of us watching on our television screens saw the Libyan representative renounce Qadhafi's violent rule. He said, "Young people in my country today are with their blood writing a new chapter in the history of struggle and resistance. We in the Libyan mission have categorically decided to serve as representatives of the Libyan people and their free will."

This is the call we should heed. This is a time for action. Now is the opportunity for us to support all who are willing to stand up on behalf of the rights we claim to cherish. So let us do that and let us do it with the sounds of the young people from the streets of Tripoli to the markets of Tunis and the squares of Cairo echoing in our ears.

* * * *

(2) Suspension of Libya from Membership

On March 1, 2011, the General Assembly unanimously voted to suspend Libya's rights of membership on the Human Rights Council, following a recommendation by the Human Rights Council in its resolution of February 25, 2011 that Libya's membership rights be

suspended “in view of the gross and systematic violations of human rights by the Libyan authorities.” UN Doc. A/HRC/RES/S-15/1. Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, announced the decision:

We had, just, a historic session of the General Assembly when all members unanimously agreed to the suspension of Libya’s membership from the Human Rights Council. This is the first time that either the Human Rights Council or its predecessor, the Human Rights Commission, have suspended any member state for gross violations of human rights. And we think this is an important step forward in enhancing the credibility of the Human Rights Council, whose credibility on these issues has often, quite legitimately, been called into question. Today, the General Assembly exercised its authority to suspend a member state for gross violations of human rights. In our view, this is progress, as was last Friday’s special session in Geneva for the Human Rights Council, and we hope its progress will be sustained.

Ambassador Rice’s remarks including responses to reporters’ questions are available at <http://usun.state.gov/briefing/statements/2011/157522.htm>. Ambassador Rice explained in her remarks that:

The protests in Libya are being driven by the people of Libya. This is about the universal human rights of the Libyan people and all people—and about a regime that has failed to meet its responsibility to protect its own population. The United States was pleased to co-sponsor this resolution along with partners from all regions of the world, which underscores the universality of this decision and the depth of our commitment to the human rights we all share.

The full text of Ambassador Rice’s remarks is available at <http://usun.state.gov/briefing/statements/2011/157518.htm>.

On November 18, 2011, the General Assembly adopted Resolution 66/11, restoring Libya’s rights of membership in the Human Rights Council. The United States voted in favor of the resolution, which passed by a margin of 123 in favor, 4 against, with 6 abstaining. Ambassador Rice issued a statement welcoming the reinstatement. Her statement is excerpted below and available in full at <http://usun.state.gov/briefing/statements/2011/177356.htm>. Ambassador Jeffrey DeLaurentis, United States Alternate Representative for Special Political Affairs, also delivered a statement on Libya’s return to the Council, which is available at <http://usun.state.gov/briefing/statements/2011/177360.htm>.

* * * *

The reinstatement of Libya to the UN Human Rights Council marks the start of a new opportunity for the Libyan people. The General Assembly’s unanimous suspension of Libya nearly nine months ago was an extraordinary and historic response to a vicious, indiscriminate

campaign of violence by the Qadhafi regime. With strong support from nations in the Middle East and every region of the world, the international community demonstrated that it would not turn a blind eye to one ruler's shameful treatment of his own people.

Today's reinstatement is a significant achievement for the Human Rights Council, which demonstrated commendable leadership in requesting Libya's suspension. It is also a strong step towards regularization of Libya's role in the international system and a statement of solidarity with the Libyan people, who have made extraordinary sacrifices to pursue an inclusive and democratic future that respects and protects human rights.

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e. Actions regarding Syria

Throughout 2011, the Human Rights Council focused on the human rights crisis in Syria, where the Government of Syria repeatedly used violent means to repress peaceful protestors. In April, the Council convened a Special Session and passed a resolution on Syria that included a request that the UN Office of the High Commissioner for Human Rights ("OHCHR") dispatch urgently a mission to Syria to investigate all alleged violations of international human rights law. In August, the Council again convened a Special Session on Syria and passed a resolution mandating a Commission of Inquiry. In November, the Commission of Inquiry issued its first report. And in December, the Council again convened a Special Session and passed another resolution on Syria that established a special rapporteur on the situation of human rights in Syria after the end of the mandate of the Commission of Inquiry. These actions are discussed below.

(1) Special Session on Syria in April (16th Special Session)

Ambassador Eileen Chamberlain Donahoe, U.S. Representative to the Human Rights Council, addressed the Special Session on April 29, 2011 in Geneva. Her remarks are excerpted below and available in full at <http://geneva.usmission.gov/2011/04/29/hrc-special-session-on-syria-statement-by-ambassador-donahoe/>.

* * * *

The purpose of this Special Session of the Human Rights Council is to make clear that the international community strongly condemns the killing, arrest and torture of peaceful protestors taking place in Syria, even as we speak. To the Syrian Government, we are sending a clear and unequivocal message that we will not turn a blind eye as you arbitrarily imprison, torture, and kill your own citizens. To the brave people of Syria, who are demanding freedom and dignity, we are here to say that the world stands by you, and we will not ignore your plight.

Members of the Human Rights Council are gathered today to express our outrage at the extreme violence used by the Syrian government to silence their citizens' universal rights to freedom of expression, peaceful assembly, and participation in the affairs of their state. We

condemn their brutal methods of silencing dissent, through shooting unarmed peaceful demonstrators and torture.

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We note that the Secretary-General, the High Commissioner for Human Rights, and a group of ten UN special procedure mandate holders, have called on the Syrian government to stop the excessive use of force against peaceful protestors, and called for investigations on and accountability for the abuses. We remind all that security professionals are personally accountable if they carry out unlawful orders to kill peaceful protestors. We also are concerned about restrictions on freedom of movement within Syria and reports that the Syrian government is denying access to border crossings out of Syria, which violates the right to leave one's country. The Syrian government's censorship, control of media, and restrictions on journalists and internet access is deeply troubling.

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On April 29, the Human Rights Council adopted a resolution by a vote of 26 to 9 with 7 abstentions, condemning the Syrian Government for its use of violence in response to its citizens' peaceful exercise of their right to freedom of expression. U.N. Doc. A/HRC/RES/S-16/1. Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, issued a statement hailing the resolution. Ambassador Rice's statement is available at <http://usun.state.gov/briefing/statements/2011/162200.htm>. Secretary Clinton also issued a statement on April 29 on the Special Session, which is excerpted below and available at <http://geneva.usmission.gov/2011/05/02/clinton-hrc-ss-syria/>.

* * * *

Today the UN Human Rights Council took urgent action to shine a light on the deteriorating human rights situation in Syria and condemn the continued human rights abuses by the Syrian government. Today's resolution—passed with an overwhelming majority by members from all regions of the globe—unequivocally indicates that the use of force by the Syrian government to quell peaceful political demonstrators is unacceptable. The international community has spoken and expressed its outrage at the violence used by the Syrian government to deny its population their universal human rights, including the freedoms of expression and assembly.

The Council's forceful statement, coupled with its decision to establish an urgent investigation led by the Office of the High Commissioner for Human Rights, ensures that the international community will remain actively engaged in the human rights crisis in Syria.

The Council also called upon the Syrian government to immediately release all prisoners of conscience and arbitrarily detained persons, including those who were detained before the recent events, and to immediately cease any intimidation, persecution and arbitrary arrests of individuals, including lawyers, human rights defenders and journalists.

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On June 15, at the 17th Session of the Human Rights Council, a group of over 50 nations agreed on a Joint Statement condemning the Syrian government's ongoing repression of its citizens' rights. The United States joined and strongly supported the Joint Statement, as explained in the statement of Ambassador Donahoe, available at <http://geneva.usmission.gov/2011/06/15/human-rights-council-statement-on-syria-shows-international-community%E2%80%99s-resolve/>. The State Department Spokesperson also issued a statement expressing the strong support of the United States for the Joint Statement, available at <http://geneva.usmission.gov/2011/06/16/us-and-over-50-un-members-issue-forceful-statement-on-deteriorating-human-rights-situation-in-syria/>.

(2) Special Session on Syria in August (17th Special Session)

Another Special Session on Syria convened in August. On August 22, 2011, Ambassador Donahoe addressed the Special Session on Syria. Her statement, excerpted below, is available in full at <http://geneva.usmission.gov/2011/08/22/ambassador-donahoe-the-syrian-people-cannot-wait/>.

* * * *

The human rights situation in Syria is extremely grave and deteriorating. The death toll continues to rise. Regime security forces continue to engage in house-to-house raids, mass arrests, and the torture of prisoners. We have heard multiple accounts from human rights groups of the Assad regime's security forces interrogating and abusing detainees in large facilities such as stadiums and factories. There are also credible reports of detainees being tortured to death and of bodies returned to families bearing signs of torture.

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The United States deplores Assad's campaign of ever-increasing brutality and terror against unarmed innocents, which may amount to crimes against humanity. The regime's horrific actions – the systematic violence, the mass arrests, and the outright murder of civilians – show its disdain for the will of the Syrian people, and for the calls of the Arab League, the Gulf Cooperation Council, regional leaders and the international community to end the violence immediately.

Assad's chosen course also defies the clear demands contained in the UN Security Council's Presidential Statement. And the regime's continued assault on civilians flies in the face of a commendable initiative by the Turkish government, which warned the Assad regime that it must halt its attacks on civilians immediately and unconditionally.

This is not the work of the fictional "armed gangs" invoked by Assad's propagandists. The regime has made a conscious choice to continue to deploy security forces throughout the country to prevent demonstrations, to attack civilians, and to arrest activists and protesters on a

massive scale. The Assad regime has no intention of ceasing its violent attacks against the Syrian people.

We welcome the recent report of the Syria Fact Finding Mission, called for at this Council's April 29 Special Session. We also welcome the statements made by the Security Council, including the August 3 Presidential Statement. Today we must take firmer actions to halt the ongoing crackdown against the Syrian people. The United States supports the call for an international, transparent, independent and prompt investigation into alleged violations of international human rights law by Syrian authorities. And we will work with our partners so that those responsible for crimes will be held accountable, either through the courts of a democratic Syria or through international processes.

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Also on August 22, Ambassador Donahoe delivered the U.S. explanation of vote on the resolution on Syria passed by the Human Rights Council at its August Special Session by a vote of 33 to 4, with 9 abstentions. Ambassador Donahoe's statement appears below and is available at <http://geneva.usmission.gov/2011/08/23/ambassador-donahoe-says-hrc-vote-shows-growing-consensus-that-assad-has-lost-legitimacy-to-govern/>.

* * * *

The passage today of the Human Rights Council resolution on the Human Rights Situation in Syria sends several important messages:

First, there is a very strong and growing consensus in the international community that Assad has lost legitimacy to govern and must step down.

The outcome manifests the extent to which he is now isolated.

Second, through this resolution, the international community sent a clear message to the Syrian people: We will not stand by silently as innocent civilians and peaceful protesters are slaughtered by security forces. We are working to ramp up pressure on the Syrian authorities to help ensure that the violence ends.

We have not been fooled by empty promises of reform and engagement.

Actions speak louder than words: the continuing atrocities have sent a loud and clear message to us all that Assad's promises cannot be trusted.

The Commission of Inquiry established by the resolution will ensure that evidence of atrocities will be uncovered and those responsible will be identified and held accountable.

Today's outcome is a victory for the Syrian people.

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As indicated in Ambassador Donahoe's statement above, the resolution passed by the Human Rights Council at its Special Session on Syria in August mandated the establishment of a Commission of Inquiry. U.N. Doc. A/HRC/RES/S-17/1. Specifically, operative paragraph 13 of the resolution stated that the HRC:

Decides to dispatch urgently an independent international commission of inquiry, to be appointed by the President of the Human Rights Council, to investigate all alleged violations of international human rights law since March 2011 in the Syrian Arab Republic, to establish the facts and circumstances that may amount to such violations and of the crimes perpetrated and, where possible, to identify those responsible with a view to ensuring that perpetrators of violations, including those that may constitute crimes against humanity, are held accountable.

On August 23, Secretary Clinton issued a statement congratulating the HRC for its resolution mandating a Commission of Inquiry into the situation in Syria. Secretary Clinton's statement is set forth below and also available at <http://geneva.usmission.gov/2011/08/24/secretary-clinton-syria/>.

* * * *

I congratulate the Human Rights Council for its work to create an international independent Commission of Inquiry to investigate the deteriorating human rights situation in Syria and to make clear the world's concern for the Syrian people. Today, the international community joined together to denounce the Syrian regime's horrific violence. The United States worked closely with countries from every part of the world—more than 30 members of the Human Rights Council, including key Arab members—to establish this mandate.

The Commission of Inquiry will investigate all violations of international human rights law by Syrian Authorities and help the international community address the serious human rights abuses in Syria and ensure that those responsible are held to account.

There are credible reports that government forces in Syria have committed numerous gross human rights violations, including torture and summary executions in their crackdown against opposition members. The most recent attack by Syrian security forces on protesters in Homs is as deplorable as it is sadly representative of the Asad regime's utter disregard for the Syrian people.

The United States condemns in the strongest possible terms the slaughter, arrest, and torture of peaceful protesters taking place in Syria. We continue to urge nations around the world to stand with the Syrian people in their demands for a government that represents the needs and will of its people and protects their universal rights. For the sake of the Syrian people, it is time for Asad to step aside and leave this transition to the Syrians themselves.

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(3) First report of the Commission of Inquiry

On November 23, 2011, the Commission of Inquiry established by HRC Resolution S-17/1 issued its first report. U.N. Doc. A/HRC/RES/S-17/2/Add.1. Ambassador Donahoe welcomed the release of the report in a November 28 statement, available at <http://geneva.usmission.gov/2011/11/28/syria-coi/>:

The Commission's findings confirm what we have been hearing for several months—that on a nearly daily basis the Assad regime is killing peaceful demonstrators and committing arbitrary detentions, torture, and other serious human rights violations. This report amplifies an already growing chorus of international condemnation and call for action. It is clear to anyone who reads it that Assad's unwillingness to end his regime's violence is taking Syria down a very dangerous path despite efforts led by the Syrian people to start a peaceful transition to democracy.

(4) Special Session on Syria in December (18th Special Session)

On December 2, 2011, at its 18th Special Session, the HRC adopted another resolution on Syria by a vote of 37 to 4, with 6 abstentions. U.N. Doc. A/HRC/RES/S/18-1. Resolution 18-1 established the mandate of a special rapporteur to assume responsibilities for monitoring the human rights situation in Syria at the end of the mandate of the Commission of Inquiry. Ambassador Donahoe delivered a statement welcoming again the report of the Commission of Inquiry and further decrying the ongoing repression of human rights in Syria. Ambassador Donahoe's December 2 statement, excerpted below, is available in full at <http://geneva.usmission.gov/2011/12/02/us-statement-special-session-syria/>.

* * * *

The United States welcomes the forceful report of the Commission of Inquiry. I want to highlight the Commission's recommendations for the immediate admission and protection of human rights monitors; for the unfettered admission of international media; and for the United Nations to continue to take steps to halt the violence in Syria. This special session today, and the resolution before it, move these recommendations forward.

We once again call on the Syrian regime to immediately admit the Commission of Inquiry and grant it unfettered access throughout Syria. Similarly, Syria must immediately admit Arab League monitors, independent human rights monitors, and humanitarian organizations, with no restrictions on their activities.

We condemn in the strongest possible terms the ongoing slaughter, the arbitrary arrest, and the torture of peaceful protestors. We will continue to work with regional partners and the broader international community to pressure the Assad regime to end the violence against the Syrian people. The Syrian government's abuses have been condemned by leaders of the Arab world, including by the actions taken by the Arab League over the past week; by other international leaders; and by the United Nations, where just over one week ago in a vote in the General Assembly's Third Committee, 122 members of the United Nations stood together to call for an immediate end to the violence in Syria.

Our message is firm and clear:

- To the people of Syria—the world stands by you, and we will not ignore your plight in the face of ongoing violence;
- To the Syrian Government—the time has come to end the flagrant violations of the human rights of your people, and to allow Syrians their right to peacefully and democratically change their government.

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B. DISCRIMINATION

1. Race

a. *Overview*

In 2011 the United States continued to promote implementation by States Parties of their obligations under the International Convention on the Elimination of All Forms of Racial Discrimination and to advocate international cooperation to combat racial discrimination. The United States also pursued its domestic efforts to counter racial discrimination and stressed its view that combating racial discrimination and intolerance must not and need not occur at the expense of the right to freedom of expression.

b. *Durban follow-up and tenth anniversary commemorations*

(1) *Human Rights Council*

Throughout 2011, when UN bodies or other States raised issues relating to the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa and the Durban Declaration and Programme of Action (“DDPA”) and its follow-up, the United States continued to articulate its longstanding concerns with the conference, its outcome document, and the outcome document of the 2009 Durban Review Conference. For background see *Digest 2001* at 267-68, *Digest 2007* at 315-17, *Digest 2008* at 284-85, *Digest 2009* at 174-75 and *Digest 2010* at 222-23. For example, on March 25, 2011, the United States disassociated from consensus on the resolution renewing the mandate of the special rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance at the 16th Session of the Human Rights Council. U.N. Doc. A/HRC/RES/16/33. The U.S. explanation of position, set forth below, is available at <http://geneva.usmission.gov/2011/03/25/eop-racism/>.

* * * *

The United States has consistently sought to support practical and concrete efforts to end racism and racial discrimination wherever it occurs. We feel there is an important role for a Special Rapporteur on racism and have worked constructively over the past several years to focus his work on ensuring that all states live up to their obligations under the International Convention on

the Elimination of All Forms of Racial Discrimination (ICERD) and other practical measures to bring the promise of that Convention and other instruments barring racism and racial discrimination to fruition. We cannot, however, endorse all of the provisions of the current mandate as delineated in the prior resolution, language which we believe neither reflects international law nor appropriate policy.

It is, therefore, with sincere regret that the United States must disassociate from consensus on the resolution before us. Our position on the Durban Declaration and Programme of Action is well known. We have been careful to identify those parts of the Durban process that we find neither relevant nor practical in guiding the Council's work in combating racism. We cannot endorse full implementation of the DDPA. We have also been careful to communicate the importance of balancing necessary legal protections for freedom of expression with solutions to the problem of incitement. As such, we cannot accept the language of the mandate as currently conceived.

We will continue to look for ways to balance our differences with the overriding goal we all share to eliminate racism in all its forms, wherever it occurs. We are proud of the efforts we have made in that regard and will continue to seek consensus on practical ways to make progress on that worthy objective.

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Similarly, on September 30, 2011, the United States disassociated from consensus on the resolution on the mandate of the Working Group of Experts on Peoples of African Descent at the 18th Session of the Human Rights Council. U.N. Doc. A/HRC/RES/18/28. The United States delivered the following explanation of position, available at <http://geneva.usmission.gov/2011/09/30/eop-peopleofafricandescent/>.

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The United States is profoundly committed to ending racism and racial discrimination. We remain fully and firmly committed to upholding the human rights of all people and to combating racial discrimination, xenophobia, intolerance, anti-Semitism and bigotry, including by enhancing our implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. This commitment is rooted in the saddest chapters of our history and reflected in the most cherished values of our union. We will continue to work in partnership with all nations of goodwill to uphold human rights and combat racism, bigotry, and racial discrimination in all forms and all places.

Nevertheless our concerns about the DDPA are well known and we cannot therefore endorse all efforts undertaken by the Working Group in this regard. The US will therefore disassociate from consensus on the resolution before us. Since its inception at the 2001 World Conference Against Racism in Durban, South Africa, the Durban process has included ugly displays of intolerance and anti-Semitism. In 2009, after working to try to achieve a positive, constructive outcome in the Durban Review Conference that would get past the deep flaws of the Durban process to date to focus on the critical issues of racism, the United States withdrew from participating because the review conference's outcome document reaffirmed, in its entirety, the

Durban Declaration and Programme of Action (DDPA) from 2001, which unfairly and unacceptably singled out Israel. The DDPA also endorsed overbroad restrictions on freedom of expression that run counter to the U.S. commitment to robust free speech.

We are confident that beneath our shared differences, we share the same goals and we are proud of efforts we have jointly made in this and other forums to underscore this fact. We support the objective of the Working Group to explore means of combating racial discrimination against persons of African descent around the world. This topic is important to us, and we want to be able to support it. The United States supported declaring 2011 the UN Year of People of African Descent and has worked on important programs to combat racism, including special sessions at the OAS, bilateral work with Brazil and Colombia, and programming at our embassies around the world.

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The United States reiterated its concerns with the Durban process in a statement at the 18th Session of the Human Rights Council on September 27, 2011 on Item 9: “Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action,” available at <http://geneva.usmission.gov/2011/09/27/durban-declaration-and-programme-of-action/>.

(2) General Assembly

The United States did not participate in the commemoration in September 2011 of the 10-year anniversary of the 2001 Durban Conference. The White House issued a press statement on September 22, 2011 explaining the decision not to participate. That statement appears below and is available at www.whitehouse.gov/the-press-office/2011/09/22/statement-press-secretary-10th-anniversary-durban-conference.

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Several months ago, the United States announced that we would not participate in the 10-year commemoration of the 2001 Durban Conference. Consistent with that decision, we are not attending today’s high level event in New York.

Since its inception at the 2001 World Conference Against Racism in Durban, South Africa, the Durban process has included ugly displays of intolerance and anti-Semitism. In 2009, after working to try to achieve a positive, constructive outcome in the Durban Review Conference that would get past the deep flaws of the Durban process to date to focus on the critical issues of racism, the United States withdrew from participating because the review conference’s outcome document reaffirmed, in its entirety, the Durban Declaration and Programme of Action (DDPA) from 2001, which unfairly and unacceptably singled out Israel. The DDPA also endorsed overbroad restrictions on freedom of expression that run counter to the U.S. commitment to robust free speech.

Last December, the United States voted against the resolution establishing the commemoration because we did not want to see the hateful and anti-Semitic displays of the 2001 Durban Conference commemorated.

Over the last few months, we did not participate in negotiations on the Commemoration's Political Declaration document and, like many other countries, we were not present when the Declaration was adopted. We are also deeply disappointed that the rules established for credentialing non-governmental organizations to participate were used by some delegations to silence voices critical of the Durban process.

The United States is profoundly committed to ending racism and racial discrimination. We remain fully and firmly committed to upholding the human rights of all people and to combating racial discrimination, xenophobia, intolerance, anti-Semitism and bigotry, including through enhanced implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. This commitment is rooted in the saddest chapters of our history and reflected in the most cherished values of our union. We will continue to work in partnership with all nations of goodwill to uphold human rights and combat racism, bigotry, and racial discrimination in all forms and all places.

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c. Other issues relating to protecting freedom expression while countering racism or intolerance

In statements at the Human Rights Council and the UN General Assembly Third Committee, the United States emphasized the need to protect freedom of expression even while attempting to combat racism. On September 27, 2011, U.S. delegate Amira Fouad delivered the U.S. statement at the 18th Session of the Human Rights Council on "Item 9: Clustered Interactive Dialogue with the Special Rapporteur on Contemporary Forms of Racism, and the Working Group of Experts on People of African Descent." The statement appears below and is available at <http://geneva.usmission.gov/2011/09/27/efforts-to-combat-racism-must-also-preserve-robust-freedom-of-expression/>.

* * * *

The United States expresses its appreciation to the Special Rapporteur on Racism and the Working Group of Experts on People of African Descent for drawing attention to the continued vigilance that is needed in order to combat racism and to eliminate all forms of racial discrimination. We condemn racism of any kind for any purpose by any person or group against any person or group. We have worked hard at every level to combat racism, including:

- Domestically, we take seriously our obligations as a State Party to the International Convention on the Elimination of all Forms of Racial Discrimination. The United States implements these obligations through the operation of the U.S. Constitution, state constitutions, and local laws, together with the federal and state machinery charged with protecting human rights. Our laws prohibit discrimination based on race in all areas of life, from education to housing to employment. We work to ensure that hate crimes are prosecuted, that law enforcement misconduct is investigated and remedied, and that our

laws and programs ensure fair housing, fair lending, equal educational opportunity, equal employment opportunity and the right to vote are enjoyed by all, without regard to race.

- Bilaterally, we have co-funded and cooperated in anti-racism programs around the world, such as the U.S.-Brazil Joint Action Plan to Eliminate Racial and Ethnic Discrimination and Promote Equality and the U.S.-Colombia Action Plan to Promote Racial and Ethnic Equality; and
- Multilaterally, we have pledged \$650,000 to UNESCO to develop an anti-racism curriculum; provided resources to the Inter-American Commission on Human Rights Rapporteur on the Rights of Afro-descendants and against Racial Discrimination; and joined other countries in the Western Hemisphere to focus on the International Year for People of African Descent.

But the United States believes that even the best-intentioned efforts to combat racism must also preserve robust freedom of expression. We are concerned that the Special Rapporteur, for example, recommends that States prohibit advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence; dissemination of ideas based on racial superiority or hatred; and incitement to racial discrimination. He also invokes the limitations in Articles 19-22 of the International Covenant on Civil and Political Rights, apparently to suggest that States should control the Internet or other new technologies to prevent extremists from spreading material that is deemed racist. In its recommendations, the Working Group invokes Article 4 of the International Covenant on the Elimination of Racial Discrimination to underline the need to criminalize racism.

We remain deeply concerned about speech that advocates national, racial, or religious hatred, particularly when it seeks to incite imminent violence, discrimination, or hostility. But based on our own experience, the United States remains convinced that the best antidote to offensive speech is not bans and punishments but a combination of three key elements: robust legal protections against discrimination and hate crimes, proactive government outreach to racial and religious groups, and the vigorous speech that challenges the premises and conclusions of hateful speech.

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Likewise, in an explanation of vote delivered by U.S. Deputy Representative Sammis on November 17, 2011, the United States expressed concern that a Third Committee resolution, U.N. Doc. A/C.3/66/L.60 on “Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance” did not adequately account for the need to protect freedom of expression. Mr. Sammis’ statement follows and is available at

<http://usun.state.gov/briefing/statements/2011/177340.htm>.

* * * *

The United States supports many elements of this resolution. We join other members of the Third Committee in expressing revulsion at any attempt to glorify or otherwise promote Nazi ideology. The United States has been a strong supporter of the UN’s efforts to remember the

Holocaust and has a deep commitment to honoring the memory of the millions of lives lost. We also condemn without reservation all forms of religious intolerance or hatred.

We remain concerned, however, that the resolution fails again this year to distinguish between actions and statements that, while offensive, should be protected by freedom of expression, and criminal actions motivated by bias that should always be prohibited. The United States shares the concern expressed in this resolution regarding increases in the number of racist incidents expressed in any medium or forum, including on the Internet.

However, we do not consider curtailing expression to be an appropriate or effective means of combating racism and related intolerance. Rather, it is our firm conviction, as reflected in the U.S. Constitution and laws of the United States, that individual freedoms of speech, expression and association should be robustly protected, even when the ideas represented by such expression are full of hatred. It is for this reason that the United States has taken a reservation to Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. We remain convinced of the need for this reservation.

In a free society hateful ideas will fail on account of their own intrinsic lack of merit. The best antidote to intolerance is not criminalizing offensive speech but rather a combination of robust legal protections against discrimination and hate crimes, proactive government outreach to minority religious groups, and the vigorous defense of both freedom of religion and freedom of expression.

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d. OAS Resolution on the Draft Inter-American Convention Against Racism

On June 7, 2011, the General Assembly of the Organization of American States (“OAS”) adopted a resolution at its fourth plenary session relating to the Draft Inter-American Convention Against Racism and All Forms of Discrimination and Intolerance. AG/RES. 2677 (XLI-O/11). Operative Paragraph 2 of the resolution extended the mandate of the Working Group of the Committee on Juridical and Political Affairs to “entrust it with the preparation of legally binding instruments with due consideration of a convention against racism and racial discrimination, as well as an optional protocol or protocols that would, in addition, address all other forms of discrimination and intolerance....” Footnote 2 of the resolution noted the United States’ opposition to negotiating such a legally binding instrument:

The United States reserves on all references in the resolution to the negotiation of any legally binding instrument to combat racism, racial discrimination and other forms of discrimination or intolerance because of its longstanding position that the Working Group should not negotiate a new convention against racism, racial discrimination and other forms of discrimination or intolerance. The International Convention on the Elimination of All Forms of Racial Discrimination, to which some 170 countries are States Parties, including 33 members of this organization, prohibits discrimination on the basis of race, color, descent, or national or ethnic origin, and obliges States Parties to “undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms.” As this robust global treaty regime already provides

comprehensive protections in this area, a regional instrument is not necessary and runs the risk of creating inconsistencies with this global regime. As early as 2002, the Inter-American Juridical Committee articulated similar concerns, concluding that it was not advisable to negotiate a new convention in this area. The United States believes that the resources of the OAS and of its member states would be better utilized at identifying practical steps that governments in the Americas might adopt to combat racism, racial discrimination and other forms of discrimination and intolerance, including best practices in the form of national legislation and enhanced implementation of existing international instruments. Such efforts should be aimed at bringing immediate and real-world protection against discrimination.

2. Gender

a. Women, Peace, and Security

In 2011, both the Obama Administration and the United Nations took steps to recognize and promote the important role of women in conflict resolution and promoting and maintaining peace. Some of those initiatives, which follow on UN Security Council Resolution 1325 and related resolutions, are discussed below. See *Digest 2010* at 232-35 for a discussion of the efforts to implement Resolution 1325 as of its tenth anniversary.

(1) The United States National Action Plan on Women, Peace, and Security

On December 19, 2011, President Obama issued Executive Order 13595 directing that the executive branch have and begin to implement a National Action Plan on Women, Peace, and Security (“National Action Plan”). 76 Fed. Reg. 80,205 (Dec. 23, 2011). Among the areas for U.S. Government activities and initiatives identified in E.O. 13595 are women’s “participation in peace processes and decisionmaking” in conflict-affected environments and “conflict prevention.” The National Action Plan was issued on December 19, 2011 and is available at www.whitehouse.gov/sites/default/files/email-files/US_National_Action_Plan_on_Women_Peace_and_Security.pdf. The Plan provides a statement of policy, excerpted below.

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The goal of this National Action Plan on Women, Peace, and Security is as simple as it is profound: to empower half the world’s population as equal partners in preventing conflict and building peace in countries threatened and affected by war, violence, and insecurity. Achieving this goal is critical to our national and global security.

Deadly conflicts can be more effectively avoided, and peace can be best forged and sustained, when women become equal partners in all aspects of peace-building and conflict prevention, when their lives are protected, their experiences considered, and their voices heard.

As directed by the Executive Order signed by President Obama entitled Instituting a National Action Plan on Women, Peace, and Security, this Plan describes the course the United States Government will take to accelerate, institutionalize, and better coordinate our efforts to advance women's inclusion in peace negotiations, peacebuilding activities, and conflict prevention; to protect women from sexual and gender-based violence; and to ensure equal access to relief and recovery assistance, in areas of conflict and insecurity. ...

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Above all, this National Action Plan expresses the United States' unqualified commitment to integrating women's views and perspectives fully into our diplomatic, security, and development efforts—not simply as beneficiaries, but as agents of peace, reconciliation, development, growth, and stability. We welcome this opportunity to work with our international partners to make the promise of this commitment real, to advance implementation of United Nations (UN) Security Council Resolution 1325, and to make significant progress toward the goal of sustainable peace and security for all.

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A White House Fact Sheet issued on the same day and available at www.whitehouse.gov/the-press-office/2011/12/19/fact-sheet-united-states-national-action-plan-women-peace-and-security summarized the objectives of the Plan and the commitments of U.S. government agencies under the Plan. The White House Fact Sheet is excerpted below.

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...Together, the Executive Order and *National Action Plan* chart a roadmap for how the United States will accelerate and institutionalize efforts across the government to advance women's participation in preventing conflict and keeping peace. The documents represent a fundamental change in how the U.S. will approach its diplomatic, military, and development-based support to women in areas of conflict, by ensuring that their perspectives and considerations of gender are woven into the fabric of how the United States approaches peace processes, conflict prevention, the protection of civilians, and humanitarian assistance.

The *National Action Plan* contains commitments by the Departments of State, Defense, Justice, Treasury, and Homeland Security, and the U.S. Mission to the United Nations, the U.S. Agency for International Development (USAID), the Centers for Disease Control and Prevention, and the Office of the United States Trade Representative targeted at meeting the following national objectives:

- **National Integration and Institutionalization:** Through interagency coordination, policy development, enhanced professional training and education, and evaluation, the United States Government will institutionalize a gender-responsive approach to its diplomatic, development, and defense-related work in conflict-affected environments.

- **Participation in Peace Processes and Decision-making:** The United States Government will improve the prospects for inclusive, just, and sustainable peace by promoting and strengthening women's rights and effective leadership and substantive participation in peace processes, conflict prevention, peacebuilding, transitional processes, and decision-making institutions in conflict-affected environments.
- **Protection from Violence:** The United States Government will strengthen its efforts to prevent—and protect women and children from—harm, exploitation, discrimination, and abuse, including sexual and gender-based violence and trafficking in persons, and to hold perpetrators accountable in conflict-affected environments.
- **Conflict Prevention:** The United States Government will promote women's roles in conflict prevention, improve conflict early-warning and response systems through the integration of gender perspectives, and invest in women and girls' health, education, and economic opportunity to create conditions for stable societies and lasting peace.
- **Access to Relief and Recovery:** The United States Government will respond to the distinct needs of women and children in conflict-affected disasters and crises, including by providing safe, equitable access to humanitarian assistance.

In line with these objectives, agencies will:

- Establish and improve policy and training on Women, Peace, and Security;
- Advocate for the integration of women and gender perspectives in negotiations concerning conflict resolution, peacebuilding, and political transitions, including through U.S. delegations serving as a model;
- Build women's capacity for roles in local and national government, the security sector, and civil society in conflict-affected environments, while supporting NGOs that advocate on behalf of women's participation in decision-making;
- Work with partner nations to develop laws and policies that promote and strengthen women's rights and women's participation in security-related decision-making bodies;
- Improve the capacity of the UN system, peacekeepers, partner militaries and law enforcement, and implementing contractors and aid workers to better prevent and respond to conflict-related violence against women, including sexual and gender-based violence, sexual exploitation and abuse, and trafficking in persons;
- Ensure conflict early-warning systems include gender-specific data and are responsive to sexual and gender-based violence, while investing in women and girls as a means to reduce the long-term drivers of conflict; and
- Promote women's equal access to aid distribution mechanisms and services, support access to reproductive health in emergencies, and ensure that U.S. government crisis response and recovery teams have access to gender expertise.

To ensure comprehensive follow-through, agencies will be held accountable for their commitments under the *National Action Plan*. As directed by the Executive Order, the Departments of State and Defense, and USAID will designate officers to ensure implementation, and will submit to the National Security Advisor agency-specific plans establishing time-bound, measurable, resourced actions. These plans will be coordinated by a standing interagency committee chaired by the White House National Security Staff. This committee will:

- Monitor and evaluate actions taken in support of national objectives through the creation of specific indicators;
- Integrate the concepts behind Women, Peace, and Security into relevant national-level policies and strategies;

- Establish a mechanism for regular consultation with civil society representatives;
- Report annually to the National Security Council Deputies Committee on progress made toward achieving commitments, in order to inform a report to the President; and
- In 2015, conduct a comprehensive review of, and update to, the *National Action Plan*, which will be informed by consultation with international partners and relevant civil society organizations.

The *U.S. National Action Plan on Women, Peace, and Security* embodies and sets forth the United States' commitment to ensuring that women around the world play an equal role in promoting peace and achieving just and enduring security. Today and in the years to come, the Obama Administration dedicates itself to bringing the ideas behind the *National Action Plan* to life in pursuit of this essential goal.

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Secretary of State Hillary Rodham Clinton provided a preview and context for the National Action Plan in a speech she delivered on December 16, 2011 at the International Crisis Group's "In Pursuit of Peace" Award dinner. Secretary Clinton's speech is available at www.state.gov/secretary/rm/2011/12/178967.htm. Secretary Clinton's address began with a review of recent conflicts around the world, their impact on women, and women's lack of representation at the negotiations to end the conflicts. Many of these facts were also related, with footnotes identifying source information, in a State Department Fact Sheet, available at www.state.gov/r/pa/prs/ps/2011/12/179160.htm. Secretary Clinton then introduced the National Action Plan:

...In 2000, the international community took a major step by adopting UN Security Council Resolution 1325, recognizing that women are not just victims of conflict, they are agents of peace. So let us move beyond women being seen as spoils of war, to making sure for the first time that the world is looking at women as actors, not victims; as leaders, not followers.

The United States proudly supported 1325 and four follow-up resolutions. And we're pleased that the UN, NATO, and many other nations and institutions have made important strides in implementing these ideas.

But the promise remains largely unfulfilled because legal and structural barriers in too many places prevent women from participating. Cultural norms—real or imagined—often create physical threats that prevent them from attaining a formal role.

Well, we can't wait any longer.

So on Monday, the Obama Administration will launch a comprehensive new roadmap that will be accelerating and institutionalizing efforts across the U.S. Government to advance women's participation in making and keeping peace. In a speech on Monday at Georgetown University, I will explain how our troops, our diplomats, and our development experts will all work together to take our commitment to UN Security Council Resolution 1325 to the next level and make it a priority for American foreign policy.

Secretary Clinton's December 19 Georgetown speech, mentioned above and excerpted below, is available at www.state.gov/secretary/rm/2011/12/179173.htm.

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Today, I want to focus on one aspect of peacemaking that too often goes overlooked—the role of women in ending conflict and building lasting security. Some of you may have watched a week ago Saturday as three remarkable women—two from Liberia, one from Yemen—accepted the Nobel Peace Prize in Oslo. For years, many of us have tried to show the world that women are not just victims of war; they are agents of peace. And that was the wisdom behind the historic UN Security Council Resolution 1325, which was adopted a decade ago but whose promise remains largely unfulfilled. So it was deeply heartening to see those three women command the global spotlight and urge the international community to adopt an approach to making peace that includes women as full and equal partners.

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...[T]his is not just a woman's issue. It cannot be relegated to the margins of international affairs. It truly does cut to the heart of our national security and the security of people everywhere, because the sad fact is that the way the international community tries to build peace and security today just isn't getting the job done. Dozens of active conflicts are raging around the world, undermining regional and global stability, and ravaging entire populations. And more than half of all peace agreements fail within five years.

At the same time, women are too often excluded from both the negotiations that make peace and the institutions that maintain it. Now of course, some women wield weapons of war—that's true—and many more are victims of it. But too few are empowered to be instruments of peace and security. That is an unacceptable waste of talent and of opportunity for the rest of us as well. Across the Middle East and North Africa, nations are emerging from revolution and beginning the transition to democracy. And here too, women are being excluded and increasingly even targeted.

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That is why this morning, President Obama signed an Executive Order launching the first-ever U.S. National Action Plan on Women, Peace, and Security—a comprehensive roadmap for accelerating and institutionalizing efforts across the United States Government to advance women's participation in making and keeping peace. This plan builds on the President's national security strategy, and it was jointly developed by the Departments of State and Defense, USAID, and others with guidance from the White House. I also want to take a moment to recognize all our partners in civil society and the private sector who contributed, many of whom are here today. Without your on-the-ground experience, your passionate commitment, and your tireless effort, this plan would not exist, and we look forward to working just as closely together with you on implementing it.

Let me describe briefly how we will do that. The plan lays out five areas in which we will redouble our efforts. First, we will partner with women in vulnerable areas to prevent conflicts from breaking out in the first place. Women are bellwethers of society and, in fact,

sometimes they do play the role of canary in the coal mine. They know when communities are fraying and when citizens fear for their safety. Studies suggest that women's physical security and higher levels of gender equality correlate with security and peacefulness of entire countries. But political leaders too often overlook women's knowledge and experience until it's too late to stop violence from spiraling out of control.

So the United States will invest in early warning systems that incorporate gender analysis and monitor increases in violence and discrimination against women, which can be indicators of future conflict. We will also support grassroots women's organizations that work to stop violence and promote peace. And because women's economic empowerment leads to greater prosperity for their societies, we are putting women and girls at the center of our global efforts on food security, health, and entrepreneurship. We are working to lower barriers to their economic participation so more women in more places have the opportunity to own their land, start their businesses, access markets, steps that will ultimately lift up not only their families but entire economies and societies.

But what if, despite our best efforts, conflict does flare? A second focus of our National Action Plan is strengthening protection for women and girls during and after conflict. We will work with partners on the ground to crack down on rape as a tactic of war, hold perpetrators of violence accountable, and support survivors of sexual and gender-based violence.

Now one place to start is with the poorly trained soldiers and police who contribute to a culture of lawlessness, of violence and impunity, and often are fueled by discrimination against any woman outside their family. The United States will help build the capacity of foreign militaries, police forces, and justice systems to strengthen the rule of law and ensure that protecting civilians and stopping sexual and gender-based violence in particular is a shared priority. We are also working with the UN to recruit more female peacekeepers, to better train all peacekeepers to prevent, predict, and react to violence against civilians, and to address the political dynamics that drive sexual violence in conflict areas, because it's not just soldiers. Political leaders, local influentials set the tone for these abuses, and they must be held accountable as well.

The United States will support survivors of violence and help give them new tools to report crimes and access shelters, rehabilitation centers, legal support, and other services. We will also back advocacy organizations that reach out to men and boys, including religious and tribal leaders, to reduce sexual and gender-based violence in homes and communities. I worked some years ago with citizens in Senegal to end the practice of female circumcision, and we made the case on the basis that it was bad for the health of the future mothers of Senegal. And we were able to convince tribal and religious leaders to join our cause, and it's that kind of programmatic approach that we want to see more of.

Now ultimately, the best way to protect citizens is to end the conflict itself. So a third focus of the National Action Plan is expanding women's participation in peace processes and decision-making institutions before, during, and after conflicts. As I explained in my speech on Friday in New York, women bring critical perspectives and concerns to the peace table, and can help shape stronger and more durable agreements.

Take just one example. During 2006 peace negotiations in Darfur, male negotiators deadlocked over the control of a particular river until local women, who have the experience of fetching water and washing clothes, pointed out that the river had already dried up. ...

Excluding women means excluding the entire wealth of knowledge, experience, and talent we can offer. So the United States will use the full weight of our diplomacy to push

combatants and mediators to include women as equal partners in peace negotiations. We will work with civil society to help women and other leaders give voice to the voiceless. And we will also help countries affected by conflict design laws, policies, and practices that promote gender equality so that women can be partners in rebuilding their societies after the violence ends.

And that brings me to the fourth focus of our plan—ensuring that relief and recovery efforts address the distinct needs of women and girls who are the linchpins of families and communities and invaluable partners in stabilizing countries scarred by conflict. This is crucial because humanitarian crises caused by conflict can be just as dangerous as the fighting itself and can sow the seeds of future instability. Women are often among the most vulnerable in crises, yet they rarely receive a proportionate share of assistance or have the chance to help set post-conflict priorities. But with the right tools and support, women can lead recovery efforts and help get their communities back on their feet.

So the United States will encourage our international partners to include women and civil society organizations in the design and implementation of relief efforts and reconstruction planning. We will designate gender advisors for all USAID crisis response and recovery teams, and these advisors will highlight the specific concerns of women and girls to ensure that their perspectives are solicited and incorporated in the design and implementation of our programs. Refugees and other displaced people are highly vulnerable to exploitation and abuse, including sexual violence. So we will prioritize prevention and response to sexual violence, along with other lifesaving humanitarian assistance, and help build critical services such as food distribution, emergency education, cash-for-work programs, and health centers around women and their needs, including reproductive and maternal healthcare.

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Now, I realize that this National Action Plan lays out an ambitious agenda that will require a lot of concentrated and coordinated effort. So the fifth focus is institutionalizing this work across the United States Government. As part of this process, we will increase training for our troops, diplomats, and development experts on international human rights and humanitarian law, protecting civilians, preventing and responding to sexual and gender-based violence, and combating trafficking-in-persons. We will update policies and practices across our government, because our goal is to fundamentally change the way we do business.

The President's Executive Order directs key departments and agencies to develop comprehensive strategies to implement the National Action Plan within five months. ...

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And the National Action Plan will help us work with allies and partners here at home as well as abroad ... And in fact, more than 30 countries have already developed their own national action plans.

NATO is factoring women and their needs into key planning processes and training courses, stationing gender experts throughout operational headquarters, and deploying female engagement teams to Afghanistan, where the alliance is also training local women to serve in the security forces. In 2012, 10 percent of the Afghan military academy's class will be women, and by 2014 Afghanistan expects to field 5,000 women Afghan national police officers.

The United Nations is also making important progress, building on Resolution 1325. With strong U.S. support, the Security Council has already adopted four additional resolutions on women and security in just the past three years. And last month, the General Assembly's Third Committee adopted a new U.S.-led resolution to encourage greater political participation for women and an expanded role in making and keeping peace. And the establishment of a new organization within the UN system focused on gender called UN Women, headed by the former President of Chile Michele Bachelet is also making this an important focus. And the Secretary General has appointed a special representative for sexual violence in conflict—a step we strongly supported—and the Department of Peacekeeping Operations has steadily improved its guidance to peacekeeping in order to offer protection and leadership as key training components.

Now, why is all this happening, all these countries, the United Nations, NATO, and certainly us? Well, the reason is because we are convinced. We have enough anecdotal evidence and research that demonstrates women in peacekeeping is both the right thing to do and the smart thing, as well. It's right, because, after all, women are affected disproportionately by conflict; they deserve to participate in the decisions that shape their own lives. And it's the smart thing because we have seen again and again that women participating in these processes builds more durable peace.

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(2) United Nations actions on women, peace, and security

Several meetings and events at the UN in the fall of 2011 focused on the issue of women, peace, and security and the implementation of UN Security Council resolution 1325.

Secretary Clinton and other world leaders participated in an event on Women's Political Participation during the UNGA high-level session in September 2011. Secretary Clinton's remarks on "Women's Political Participation" on September 19, 2011 are available at <http://usun.state.gov/briefing/statements/2011/172755.htm>. A Joint Declaration on Advancing Women's Political Participation, signed by Secretary Clinton and other heads of state, foreign ministers, and government representatives at the September high-level session, is available at <http://usun.state.gov/briefing/statements/2011/172776.htm>.

On October 21, 2011, the United States introduced a resolution in the UN General Assembly on Women and Political Participation. Courtney Nemroff, U.S. Counselor for Economic and Social Affairs, introduced the resolution in a statement, excerpted below, and available at <http://usun.state.gov/briefing/statements/2011/176463.htm>. A cross-regional group of 130 other countries joined the United States in cosponsoring the UNGA resolution on Women and Political Participation. The UNGA adopted the resolution by consensus in December 2011. U.N. Doc. A/RES/66/130.

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The United States has the honor to introduce, on behalf of co-sponsors representing cross-regional support, draft resolution A/C.3/66/L.20 entitled Women and Political Participation. In

addition to the 37 co-sponsors indicated on the L document, the following countries have joined the list of co-sponsors:

Columbia, Cyprus, Honduras, Monaco, Palau, Republic of the Maldives, Republic of Moldova, Republic of Korea, Tunisia, Ukraine and the United Kingdom.

...This resolution deals with an area in which women's empowerment has become increasingly critical: women's full political participation. The need for proactive measures to ensure that women enjoy their right to participate on an equal basis with men in political processes and decision-making has become increasingly evident, especially during times of transition. The resolution I am introducing today applies broadly to women everywhere, but also draws attention in a few key paragraphs to such situations of countries in transitions.

Women's political participation produces significant benefits for their communities and can bolster the development, economic prosperity, and stability of their nations. Even so, across the globe, women's voices in political decision-making are still muted. Discriminatory laws and practices persist. Recently, after taking—sometimes great—risks to call for an end to repression and to advocate for democracy in a number of countries undergoing political transitions, women activists often now face exclusion from key political negotiations.

In light of these worldwide challenges, we have introduced a resolution to underline the need to ensure women's involvement in all aspects of political processes and decision-making. The resolution reaffirms and builds upon the pioneering UN General Assembly resolution 58/142 from 2003. The new resolution begins by acknowledging key international human rights instruments to underscore their applicability to the issue of women's political participation. It also recognizes the important contributions women have made in many countries toward achieving representative, transparent and accountable governments.

The new resolution stresses the importance of women's political participation in all contexts, including during times of peace, conflict, and all stages of political transition. The resolution expresses concern at the obstacles to women's political participation on an equal basis with men and notes the opportunity that situations of political transition create for addressing those obstacles. The resolution also reaffirms the important role of women in resolving conflicts and in peacebuilding, as stated in Security Council resolution 1325.

The resolution notes that, throughout the world, discrimination and poverty can marginalize women, and that the active, equal participation of women is essential to achieve sustainable development and democracy. It highlights the importance of education, training and skills development, so that women can actively contribute fully to society and the political process.

The operative section of the resolution calls on all states to eliminate discriminatory laws, regulations and practices; and to promote and protect the human rights of women with respect to engaging in political activities, taking part in public affairs, voting, holding office and formulating policy, associating freely, assembling peacefully, and expressing their views freely.

Turning from the general to the specific, the resolution calls upon states in situations of political transition to ensure women's participation on an equal basis with men with respect to a range of political decisions and activities.

An action-oriented paragraph is addressed to states and the UN system, urging specific actions that will help remove barriers and enhance women's political participation. States are encouraged to appoint women to all levels of government posts, to commit themselves to the goal of gender balance, to support public/private partnerships and to support the role of women in conflict resolution and peacebuilding. The resolution invites states to exchange best practices,

including the experiences of states that have gone through political transition in the recent past, and encourages the dissemination of the resolution to national, regional and local authorities as well as to political parties. The resolution invites the Working Group of the Human Rights Council on Discrimination in Law and Practice to continue to include a focus on political participation during times of political transition in its work. Finally, the resolution requests the Secretary-General to submit a report in two years on the status of political participation of women and the implementation of the resolution.

...This resolution speaks to women, and on behalf of women, in all parts of the world. We are thankful to the countries, from all regions, that have already shown their support for this effort by signing on as co-sponsors, and we welcome more co-sponsors. We will be holding informal consultations with all member states to reach a consensus text that we hope will have broad and vigorous support.

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The statement of Laurie Shestack Phipps, U.S. Adviser for Economic and Social Affairs, in the Third Committee during its discussion on the advancement of women on October 10, 2011 also addressed women's full political participation, especially during times of transition. Ms. Phipps' statement is available at <http://usun.state.gov/briefing/statements/2011/175202.htm>.

On October 28, 2011, the UN Security Council also issued a presidential statement on women and peace and security. U.N. Doc. S/PRST/2011/20.

b. Women's health

On September 14, 2011, Ambassador Donahoe delivered a statement at a Human Rights Council side event on applying a human rights-based approach to efforts to eliminate preventable maternal mortality and morbidity. Her statement, excerpted below, is available at <http://geneva.usmission.gov/2011/09/14/strengthening-health-systems-to-respond-to-needs-of-women-and-girls-must-be-a-political-priority/>.

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...The United States is proud to be one of the co-sponsors of this side event on eliminating preventable maternal mortality and morbidity. More than a decade after the UN established Millennium Development Goals concerning maternal and child health, global maternal and child mortality rates remain too high.

The means exist to save the lives of women and children. Strengthening health systems to better respond to the needs of women and girls must be a political priority.

The Human Rights Council is one of several UN bodies which has demonstrated the political will to address this issue. We thank Colombia and New Zealand for their leadership on initiating that resolution. In June 2009, HRC member states adopted by consensus a resolution on

“Preventable Maternal Mortality and Morbidity and Human Rights.” As a member of the HRC coalition supporting this initiative, let me mention some key examples of U.S. actions to combat maternal mortality domestically and globally. Within the U.S., new health care reform legislation expanded coverage and improved access to preventative care. Programs such as “Healthy Start” provide primary and preventative care to high-risk pregnant women.

On our international efforts, the United States has been working to provide technical leadership in this area of family planning. In FY 2010, a total of \$648.5 million was appropriated for U.S. assistance for family planning and reproductive health programs. The FY 2011 budget included \$615 million in funding for family planning and reproductive health, including \$40 million designated for the United Nations Population Fund (UNFPA).

Through the Global Health Initiative, the U.S. commits billions of dollars to improving global health, including efforts to reduce maternal and child mortality; prevent millions of unintended pregnancies; and thwart millions of new HIV infections. Through the Global Health Initiative, we provide a range of integrated, essential services for women and their children: skilled care during pregnancy, childbirth, and the post-partum period; family planning; prevention and treatment of HIV/AIDS, tuberculosis, and malaria; and child health interventions.

During the 2010 Commission on the Status of Women session, 15 years after the Beijing Women’s Conference, the U.S. was part of a cross-regional group of co-sponsors who introduced a resolution on “Eliminating maternal mortality and morbidity through the empowerment of women.” While progress has been made on the Beijing agenda, much more remains to be done.

The U.S. looks forward to continued partnerships to improve maternal and child health and contributing to progress in this area where we can.

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c. Women and nationality

On December 7, 2011, Secretary Clinton delivered remarks at the United Nations High Commissioner for Refugees ministerial on the 60th Anniversary of the Refugee Convention. In the excerpts below from her remarks, which are available at www.state.gov/secretary/rm/2011/12/178406.htm, Secretary Clinton discussed the issue of discrimination against women in the area of nationality laws. The statement of Laurie Shestack Phipps, U.S. Adviser for Economic and Social Affairs, in the Third Committee session on the advancement of women on October 10, 2011 also discusses women’s equal right to nationality, and is available at <http://usun.state.gov/briefing/statements/2011/175202.htm>.

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I want only briefly to mention one [United States pledge to protect and assist refugees] that is a particular priority for us and for me personally. It concerns one of the major causes of statelessness, which is discrimination against women.

At least 30 countries around the world prevent women from acquiring, retaining, or transmitting citizenship to their children or their foreign spouses. And in some cases, nationality

laws strip women of their citizenship if they marry someone from another country. Because of these discriminatory laws, women often can't register their marriages, the births of their children, or deaths in their families. So these laws perpetuate generations of stateless people, who are often unable to work legally or travel freely. They cannot vote, open a bank account, or own property, and therefore they often lack access to healthcare and other public services. And the cycle continues, because, without birth registration or citizenship documents, stateless children often cannot attend school.

In this compromised state—or no state, better put—women and children are vulnerable to abuse and exploitation, including gender-based violence, trafficking in persons, and arbitrary arrests and detention. That hurts not only the women and their immediate families, but the larger communities. When you have a population of people who are denied the opportunity to participate, they cannot contribute.

The United States has launched an initiative to build global awareness about these issues and support efforts to end or amend such discriminatory laws. We want to work to persuade governments—not only officials but members of parliament—to change nationality laws that carry this discrimination to ensure universal birth registration and establish procedures and systems to facilitate the acquisition of citizenship for stateless people. I encourage other member-states to join this effort, and I want to thank the High Commissioner, who has signaled his support. I encourage UNHCR to work with UN Women, UNICEF, UNDP, and other UN partners to achieve equal nationality rights for women.

There is so much more governments can do, and even ideas we haven't thought of, to help these and other vulnerable groups. So let's challenge ourselves in the 60th anniversary time to ask: What new strategies can we adopt to better serve the refugees who come to our borders or empower the stateless people within them? How can we expand and broaden the scope of our efforts?

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d. UN Commission on the Status of Women

The United States participated in the 55th Session of the UN Commission on the Status of Women ("CSW") in February 2011. In her remarks at the session, Melanne Verweir, U.S. Ambassador-at-large for Global Women's Issues, reviewed the "unfinished agenda" of the CSW, including: increasing girls' access to education; advancing women in science and technology, including women's access to technology, such as mobile technology, to further development; expanding the green economy for women; and expanding women's role in combating climate change. She also highlighted the Global Alliance for Clean Cookstoves. Ambassador Verweir's remarks are available at <http://usun.state.gov/briefing/statements/2011/157497.htm>.

3. Sexual Orientation

a. March Joint Statement at the Human Rights Council

In March 2011, the United States co-chaired and led the international lobbying effort on a joint statement on “Ending Acts of Violence and Related Human Rights Violations Based On Sexual Orientation and Gender Identity” at the Human Rights Council, which was signed by 85 countries—18 more than signed onto any previous UN statement on lesbian, gay, bisexual, and transgender (“LGBT”) issues. This was also the first such statement to call for the decriminalization of LGBT status. In remarks available at <http://usun.state.gov/briefing/statements/2011/158892.htm>, Ambassador Rice announced the statement:

As the United States continues our important work in the Human Rights Council this week, we are proud to recognize a historic statement, signed by a record 85 nations, reaffirming the rights of all people—regardless of who they are and whom they love. More nations than ever believe that violence based on sexual orientation and gender identity must end. The United States is proud to lend our strong support to this growing consensus and to work towards a world in which all gay, lesbian, bisexual and transgender individuals can live free from fear of persecution, discrimination, or assault.

We will continue to stand firm in the Human Rights Council on behalf of all those who are at risk of violence and discrimination. And we will continue to work to ensure that rights that are universally held are universally protected.

The White House also issued a statement, available at www.whitehouse.gov/the-press-office/2011/03/22/statement-press-secretary-ending-violence-based-sexual-orientation-and-g, hailing the March joint statement at the Human Rights Council:

Over the past months our diplomats have been engaged in frank, and at times difficult, conversations about the human rights of LGBT persons with governments from around world. This morning, at the United Nations Human Rights Council, some 85 countries joined the United States in reaffirming our joint commitment to end acts of violence and human rights abuses on the basis of sexual orientation and gender identity. The President is proud of the work we have done to build international consensus on this critical issue and is committed to continuing our determined efforts to advance the human rights of all people, regardless of their sexual orientation or gender identity.

b. June Human Rights Council Resolution

On June 17, 2011, the UN Human Rights Council adopted a resolution on “Human rights, sexual orientation and gender identity” by a vote of 23 states in favor to 19 states opposing with three abstentions. U.N. Doc. A/HRC/RES/17/L.9/Rev.1. The resolution expresses “grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity.” In paragraph 1, the resolution requests that the High Commissioner complete a study by December 2011

documenting discrimination and violence against individuals based on sexual orientation and gender identity around the world and the ways international human rights law can be used to end such violence and discrimination. Several United States Government officials made statements welcoming the resolution both at the time of adoption and subsequently during 2011.

President Obama made the following statement on the day the resolution was adopted:

Today for the first time in history, the United Nations adopted a resolution dedicated to advancing the basic human rights of lesbian, gay, bisexual, and transgender (LGBT) persons. This marks a significant milestone in the long struggle for equality and the beginning of a universal recognition that LGBT persons are endowed with the same inalienable rights and entitled to the same protections as all human beings. The United States stands proudly with those nations that are standing up to intolerance, discrimination, and homophobia. Advancing equality for LGBT persons should be the work of all peoples and all nations. LGBT persons are entitled to equal treatment, equal protection, and the dignity that comes with being full members of our diverse societies. As the United Nations begins to codify and enshrine the promise of equality for LGBT persons, the world becomes a safer, more respectful, and more humane place for all people.

Daily Comp. Pres. Docs., 2011 DCPD No. 00454.

The statement of Ambassador Donahoe in support of the resolution is available at <http://usun.state.gov/briefing/statements/2011/155277.htm>.

In addition, three State Department deputy assistant secretaries provided a special briefing on the day the resolution was adopted. The full text of the briefing is available at www.state.gov/p/io/rm/2011/166470.htm. Deputy Assistant Secretary Suzanne Nossel, Bureau of International Organization Affairs, explained the resolution's significance to the Administration:

This is really a paradigmatic example of using the UN system to advance one of President Obama's top policy priorities. We've been able to deliver on broad international support behind an agenda that we have set as a key goal for this Administration.

This resolution, I think, will be a lifeline to those struggling for their rights around the world who now know that they have the weight of the United Nations behind them, that they're not alone, that they can turn to the international system for protection. When they're abused, when they're subject to violence, they can reach out and the Human Rights Council and the high commissioner for human rights are there to support them.

At the same special briefing, Deputy Assistant Secretary Daniel Baer, Bureau of Democracy, Human Rights, and Labor, elaborated on the Administration's overall efforts in the area of human rights of LGBT persons:

. . . [W]ithin the context of the UN system, there has been a series of events leading up to today's resolution which was, as Suzanne indicated, led by South Africa, but Ambassador Donahoe's team here put together a side event here last September on LGBT human rights and violence against LGBT people.

There was a statement—well, actually in New York in December. We led an effort to reinsert sexual orientation and gender identity into a resolution at the UN, where it had been removed, about extrajudicial killings.* Then in March, there was this joint statement signed by 85 countries, which the U.S. team here did a great job of leading, and now today, the first ever resolution. And so I think this resolution comes at a time where the U.S. has ramped up our engagement on this issue across the board, and not only in the context of international organizations, but also at our embassies and posts around the world.

Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations also hailed the resolution in a statement on the day of its adoption, available at <http://usun.state.gov/briefing/statements/2011/166388.htm>. Secretary of State Clinton's statement on the resolution is available at www.state.gov/secretary/rm/2011/06/166383.htm.

c. U.S. initiatives to protect the human rights of LGBT persons

On December 6, 2011, Secretary Clinton focused her remarks in recognition of International Human Rights Day on efforts to protect the human rights of LGBT persons. Secretary Clinton highlighted accomplishments at the Human Rights Council in March and June. She also introduced new initiatives of the Obama administration to further promote protection of the human rights of LGBT persons. Her remarks, excerpted below, are available at www.state.gov/secretary/rm/2011/12/178368.htm.

* * * *

...Today, I want to talk about the work we have left to do to protect one group of people whose human rights are still denied in too many parts of the world today. In many ways, they are an invisible minority. They are arrested, beaten, terrorized, even executed. Many are treated with contempt and violence by their fellow citizens while authorities

* Editor's Note: For a discussion of the U.S.-led effort to reinsert language about killings based on sexual orientation into the resolution on extrajudicial killings, see *Digest 2010* at 239-40.

empowered to protect them look the other way or, too often, even join in the abuse. They are denied opportunities to work and learn, driven from their homes and countries, and forced to suppress or deny who they are to protect themselves from harm.

I am talking about gay, lesbian, bisexual, and transgender people, human beings born free and given bestowed equality and dignity, who have a right to claim that, which is now one of the remaining human rights challenges of our time. I speak about this subject knowing that my own country's record on human rights for gay people is far from perfect. Until 2003, it was still a crime in parts of our country. Many LGBT Americans have endured violence and harassment in their own lives, and for some, including many young people, bullying and exclusion are daily experiences. So we, like all nations, have more work to do to protect human rights at home.

Now, raising this issue, I know, is sensitive for many people and that the obstacles standing in the way of protecting the human rights of LGBT people rest on deeply held personal, political, cultural, and religious beliefs. So I come here before you with respect, understanding, and humility. Even though progress on this front is not easy, we cannot delay acting. So in that spirit, I want to talk about the difficult and important issues we must address together to reach a global consensus that recognizes the human rights of LGBT citizens everywhere.

The first issue goes to the heart of the matter. Some have suggested that gay rights and human rights are separate and distinct; but, in fact, they are one and the same. Now, of course, 60 years ago, the governments that drafted and passed the Universal Declaration of Human Rights were not thinking about how it applied to the LGBT community. They also weren't thinking about how it applied to indigenous people or children or people with disabilities or other marginalized groups. Yet in the past 60 years, we have come to recognize that members of these groups are entitled to the full measure of dignity and rights, because, like all people, they share a common humanity.

This recognition did not occur all at once. It evolved over time. And as it did, we understood that we were honoring rights that people always had, rather than creating new or special rights for them. Like being a woman, like being a racial, religious, tribal, or ethnic minority, being LGBT does not make you less human. And that is why gay rights are human rights, and human rights are gay rights.

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The second issue is a question of whether homosexuality arises from a particular part of the world. Some seem to believe it is a Western phenomenon, and therefore people outside the West have grounds to reject it. Well, in reality, gay people are born into and belong to every society in the world. They are all ages, all races, all faiths; they are doctors and teachers, farmers and bankers, soldiers and athletes; and whether we know it, or whether we acknowledge it, they are our family, our friends, and our neighbors.

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The third, and perhaps most challenging, issue arises when people cite religious or cultural values as a reason to violate or not to protect the human rights of LGBT citizens. This is not unlike the justification offered for violent practices towards women like honor killings, widow burning, or female genital mutilation. Some people still defend those practices as part of a cultural tradition. But violence toward women isn't cultural; it's criminal. Likewise with slavery,

what was once justified as sanctioned by God is now properly reviled as an unconscionable violation of human rights.

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The fourth issue is what history teaches us about how we make progress towards rights for all. Progress starts with honest discussion. Now, there are some who say and believe that all gay people are pedophiles, that homosexuality is a disease that can be caught or cured, or that gays recruit others to become gay. Well, these notions are simply not true. They are also unlikely to disappear if those who promote or accept them are dismissed out of hand rather than invited to share their fears and concerns. No one has ever abandoned a belief because he was forced to do so.

* * * *

But progress comes from changes in laws. In many places, including my own country, legal protections have preceded, not followed, broader recognition of rights. Laws have a teaching effect. Laws that discriminate validate other kinds of discrimination. Laws that require equal protections reinforce the moral imperative of equality. And practically speaking, it is often the case that laws must change before fears about change dissipate.

* * * *

A fifth and final question is how we do our part to bring the world to embrace human rights for all people including LGBT people. Yes, LGBT people must help lead this effort, as so many of you are. Their knowledge and experiences are invaluable and their courage inspirational. We know the names of brave LGBT activists who have literally given their lives for this cause, and there are many more whose names we will never know. But often those who are denied rights are least empowered to bring about the changes they seek. Acting alone, minorities can never achieve the majorities necessary for political change.

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... Right here in Geneva, the international community acted this year to strengthen a global consensus around the human rights of LGBT people. At the Human Rights Council in March, 85 countries from all regions supported a statement calling for an end to criminalization and violence against people because of their sexual orientation and gender identity.

At the following session of the Council in June, South Africa took the lead on a resolution about violence against LGBT people. The delegation from South Africa spoke eloquently about their own experience and struggle for human equality and its indivisibility. When the measure passed, it became the first-ever UN resolution recognizing the human rights of gay people worldwide. In the Organization of American States this year, the Inter-American Commission on Human Rights created a unit on the rights of LGBT people, a step toward what we hope will be the creation of a special rapporteur.

Now, we must go further and work here and in every region of the world to galvanize more support for the human rights of the LGBT community. To the leaders of those countries where people are jailed, beaten, or executed for being gay, I ask you to consider this: Leadership, by definition, means being out in front of your people when it is called for. It means standing up

for the dignity of all your citizens and persuading your people to do the same. It also means ensuring that all citizens are treated as equals under your laws, because let me be clear—I am not saying that gay people can't or don't commit crimes. They can and they do, just like straight people. And when they do, they should be held accountable, but it should never be a crime to be gay.

* * * *

The Obama Administration defends the human rights of LGBT people as part of our comprehensive human rights policy and as a priority of our foreign policy. In our embassies, our diplomats are raising concerns about specific cases and laws, and working with a range of partners to strengthen human rights protections for all. In Washington, we have created a task force at the State Department to support and coordinate this work. And in the coming months, we will provide every embassy with a toolkit to help improve their efforts. And we have created a program that offers emergency support to defenders of human rights for LGBT people.

This morning, back in Washington, President Obama put into place the first U.S. Government strategy dedicated to combating human rights abuses against LGBT persons abroad. Building on efforts already underway at the State Department and across the government, the President has directed all U.S. Government agencies engaged overseas to combat the criminalization of LGBT status and conduct, to enhance efforts to protect vulnerable LGBT refugees and asylum seekers, to ensure that our foreign assistance promotes the protection of LGBT rights, to enlist international organizations in the fight against discrimination, and to respond swiftly to abuses against LGBT persons.

I am also pleased to announce that we are launching a new Global Equality Fund that will support the work of civil society organizations working on these issues around the world. This fund will help them record facts so they can target their advocacy, learn how to use the law as a tool, manage their budgets, train their staffs, and forge partnerships with women's organizations and other human rights groups. We have committed more than \$3 million to start this fund, and we have hope that others will join us in supporting it.

The women and men who advocate for human rights for the LGBT community in hostile places, some of whom are here today with us, are brave and dedicated, and deserve all the help we can give them. We know the road ahead will not be easy. A great deal of work lies before us. But many of us have seen firsthand how quickly change can come. In our lifetimes, attitudes toward gay people in many places have been transformed. Many people, including myself, have experienced a deepening of our own convictions on this topic over the years, as we have devoted more thought to it, engaged in dialogues and debates, and established personal and professional relationships with people who are gay.

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As Secretary Clinton announced in her speech above, on December 6, 2011, President Obama issued a Memorandum for the Heads of Executive Departments and Agencies on International Initiatives to Advance the Human Rights of Lesbian, Gay, Bisexual and Transgender Persons. The Memorandum is set forth below and is available at www.whitehouse.gov/the-press-office/2011/12/06/presidential-memorandum-international-initiatives-advance-human-rights-1.

* * * *

The struggle to end discrimination against lesbian, gay, bisexual, and transgender (LGBT) persons is a global challenge, and one that is central to the United States commitment to promoting human rights. I am deeply concerned by the violence and discrimination targeting LGBT persons around the world, whether it is passing laws that criminalize LGBT status, beating citizens simply for joining peaceful LGBT pride celebrations, or killing men, women, and children for their perceived sexual orientation. That is why I declared before heads of state gathered at the United Nations, “no country should deny people their rights because of who they love, which is why we must stand up for the rights of gays and lesbians everywhere.” Under my Administration, agencies engaged abroad have already begun taking action to promote the fundamental human rights of LGBT persons everywhere. Our deep commitment to advancing the human rights of all people is strengthened when we as the United States bring our tools to bear to vigorously advance this goal.

By this memorandum I am directing all agencies engaged abroad to ensure that U.S. diplomacy and foreign assistance promote and protect the human rights of LGBT persons. Specifically, I direct the following actions, consistent with applicable law:

Section 1. Combating Criminalization of LGBT Status or Conduct Abroad. Agencies engaged abroad are directed to strengthen existing efforts to effectively combat the criminalization by foreign governments of LGBT status or conduct and to expand efforts to combat discrimination, homophobia, and intolerance on the basis of LGBT status or conduct.

Sec. 2. Protecting Vulnerable LGBT Refugees and Asylum Seekers. Those LGBT persons who seek refuge from violence and persecution face daunting challenges. In order to improve protection for LGBT refugees and asylum seekers at all stages of displacement, the Departments of State and Homeland Security shall enhance their ongoing efforts to ensure that LGBT refugees and asylum seekers have equal access to protection and assistance, particularly in countries of first asylum. In addition, the Departments of State, Justice, and Homeland Security shall ensure appropriate training is in place so that relevant Federal Government personnel and key partners can effectively address the protection of LGBT refugees and asylum seekers, including by providing to them adequate assistance and ensuring that the Federal Government has the ability to identify and expedite resettlement of highly vulnerable persons with urgent protection needs.

Sec. 3. Foreign Assistance to Protect Human Rights and Advance Nondiscrimination. Agencies involved with foreign aid, assistance, and development shall enhance their ongoing efforts to ensure regular Federal Government engagement with governments, citizens, civil society, and the private sector in order to build respect for the human rights of LGBT persons.

Sec. 4. Swift and Meaningful U.S. Responses to Human Rights Abuses of LGBT Persons Abroad. The Department of State shall lead a standing group, with appropriate interagency representation, to help ensure the Federal Government's swift and meaningful response to serious incidents that threaten the human rights of LGBT persons abroad.

Sec. 5. Engaging International Organizations in the Fight Against LGBT Discrimination. Multilateral fora and international organizations are key vehicles to promote respect for the human rights of LGBT persons and to bring global attention to LGBT issues. Building on the State Department's leadership in this area, agencies engaged abroad should

strengthen the work they have begun and initiate additional efforts in these multilateral fora and organizations to: counter discrimination on the basis of LGBT status; broaden the number of countries willing to support and defend LGBT issues in the multilateral arena; strengthen the role of civil society advocates on behalf of LGBT issues within and through multilateral fora; and strengthen the policies and programming of multilateral institutions on LGBT issues.

Sec. 6. Reporting on Progress. All agencies engaged abroad shall prepare a report within 180 days of the date of this memorandum, and annually thereafter, on their progress toward advancing these initiatives. All such agencies shall submit their reports to the Department of State, which will compile a report on the Federal Government's progress in advancing these initiatives for transmittal to the President.

Sec. 7. Definitions. (a) For the purposes of this memorandum, agencies engaged abroad include the Departments of State, the Treasury, Defense, Justice, Agriculture, Commerce, Health and Human Services, and Homeland Security, the United States Agency for International Development (USAID), the Millennium Challenge Corporation, the Export Import Bank, the United States Trade Representative, and such other agencies as the President may designate.

(b) For the purposes of this memorandum, agencies involved with foreign aid, assistance, and development include the Departments of State, the Treasury, Defense, Justice, Health and Human Services, and Homeland Security, the USAID, the Millennium Challenge Corporation, the Export Import Bank, the United States Trade Representative, and such other agencies as the President may designate.

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Ambassador Susan Rice also released a statement on December 6, 2011 at the United Nations regarding the President's Memorandum on International Initiatives to Advance the Human Rights of LGBT Persons. Her statement appears below and is available at <http://usun.state.gov/briefing/statements/2011/178397.htm>.

* * * *

Today, President Obama [directed](#) all agencies to protect and promote the human rights of lesbian, gay, bisexual, and transgender persons abroad. At the United Nations, we have strongly supported efforts to codify and enshrine the promise of equality for the LGBT community, and the President's action adds yet more force to our urgent fight.

Since taking office in 2009, the Obama Administration has worked tirelessly within the UN system to advance the human rights of the world's LGBT persons. Early on, we signed the UN General Assembly's Statement on Sexual Orientation on Gender Identity. We joined the LGBT Core Groups in Geneva and New York. We won NGO consultative status for the International Gay and Lesbian Human Rights Commission. We championed the first UN resolution dedicated to advancing the basic and fundamental rights of LGBT persons. Last December, on Human Rights Day, we pledged to restore language including LGBT individuals in a resolution condemning extrajudicial killings. Within two weeks, we did so.

There is far more work to do before our LGBT friends, neighbors, parents and children live in a world free of discrimination. Through steadfast defense of our universal values, persistent engagement with international partners, and the full force of U.S. efforts under the law,

we will get there. I look forward to continuing our work and proudly carrying out the President's directive.

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Finally, the State Department issued a Fact Sheet, also on December 6, 2011, summarizing the Department's accomplishments promoting the human rights of LGBT people. The Fact Sheet is excerpted below and available in full at www.state.gov/r/pa/prs/ps/2011/12/178341.htm.

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Human rights are inalienable and belong to every person, no matter who that person is or whom that person loves. Since January 2009, Secretary Clinton has directed the Department to champion a comprehensive human rights agenda—one that includes the protection of the human rights of lesbian, gay, bisexual and transgender (LGBT) people. The Department uses its full range of diplomatic and development tools to press for the elimination of violence and discrimination against LGBT people worldwide, particularly those forced to flee their homes or countries.

The Department continues to counter efforts globally that discriminate against, criminalize, and penalize members of the LGBT community. The United States recognizes the unflagging efforts and courage of advocates and organizations fighting to promote equality and justice around the world, especially in countries where doing so puts their lives and their families at risk. At the same time, U.S. personnel policies must protect the human rights of all LGBT people, and consular and other tools must be used to provide equal access and equal rights to LGBT people.

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Under the Secretary's leadership, the Department's recent accomplishments include:

Bilateral and Regional Engagement:

- The Department has included the status of the human rights of LGBT people in each country included in the Department's annual Human Rights Report.
- The State Department works with U.S. embassies, civil society, and multilateral mechanisms, agencies, and forums to encourage countries to repeal or reform laws that criminalize LGBT status.

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Successfully Promoting LGBT Human Rights In Multilateral Forums

- At the UN Human Rights Council's (HRC) June 2011 session, the United States, South Africa, and Latin American and European Union countries led efforts to pass the first-ever UN resolution on the human rights of LGBT persons.
- At the HRC's March 2011 session, the United States co-chaired efforts of a core

group of countries to issue a statement entitled “Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity.” The statement garnered the support of 85 countries, including 20 that had never before supported similar statements on the promotion of LGBT persons’ rights.

- In December 2010, the State Department led efforts at the UN General Assembly to reinsert language on sexual orientation into a resolution on extrajudicial, summary, and arbitrary executions, after the language’s removal in committee. The amendment was approved by a 93-55 margin.
- The State Department is working to establish a special rapporteur on the protection of the human rights of LGBT people within the Inter-American Commission for Human Rights, after President Obama raised the importance of LGBT issues in a meeting with Brazilian President Dilma Rousseff earlier this year.
- The United States also partnered with Brazil and others to secure adoption of a resolution on human rights, sexual orientation, and gender identity at the Organization of American States General Assembly in June.

Protecting LGBT Refugees, Asylum Seekers, and Migrants

- The Bureau of Population, Refugees, and Migration (PRM) is working to improve the security of LGBT refugees, asylum seekers, and migrants by implementing a comprehensive LGBT refugee protection strategy developed in coordination with the Department of Homeland Security, the Department of Health and Human Services, the UN High Commissioner for Refugees (UNHCR) and NGOs.

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Supporting LGBT Human Rights Defenders and Civil Society Groups

- To strengthen civil society groups, support advocates, and increase public dialogue, the Department of State is launching the Secretary’s Global Equality Fund, a public-private partnership initiative to advance the human rights of LGBT people. The State Department is contributing more than \$3 million to this important effort, and will seek partnership commitments from donor governments, corporations, and foundations.

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- The personal security of LGBT human rights defenders remains a top priority for the Department. The Fund will enhance the Department’s efforts to provide human rights defenders with legal representation, security, and, when necessary, relocation support. Since 2010, the Department has provided emergency assistance to over 40 LGBT advocates in 11 countries throughout Africa, Asia, and the Middle East.

Championing Human Rights through Public Diplomacy

- U.S. Embassies worldwide are declaring support for the human rights of LGBT people through innovative public diplomacy.

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Strengthening The Department’s Personnel and Consular Policies

- As one of her first acts in office, Secretary Clinton directed a review of whether the State Department could extend additional benefits to domestic partners. Following President Obama's 2009 memorandum on same-sex domestic partners' benefits, the State Department announced extension of the full range of legally available benefits and allowances to same-sex domestic partners of Foreign Service staff serving abroad.
- In June 2010, Secretary Clinton revised State Department equal employment opportunity policy. As the previous policy prohibited discrimination based on sexual orientation, the new policy explicitly added protection against discriminatory treatment of employees and job applicants based on gender identity.
- The State Department revised its Foreign Affairs Manual to allow same-sex couples to obtain passports under the names recognized by their state through their marriages or civil unions.
- In June 2010, the Bureau of Consular Affairs announced new procedures for changing the sex listed on a transgender American's passport, streamlining the process and simplifying requirements to ensure greater dignity and privacy for the applicant.

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4. Age

In 2011, the United States participated in two sessions of the United Nations Open-Ended Working Group on Ageing. The intervention of the United States at the April session is available at <http://usun.state.gov/briefing/statements/2011/161145.htm>. On August 4, 2011 Courtney Nemroff, U.S. Counselor for Economic and Social Affairs, delivered the U.S. closing statement at the August session of the Working Group. Ms. Nemroff's statement, excerpted below, is available in full at www.state.gov/s/l/c8183.htm.

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We come away from this week's session with the belief that a consensus has been reached in the Working Group on the need for further, concerted, multilateral action on these issues. Although some member states support a new treaty devoted to the rights of older persons and other new mechanisms, no consensus on these options has emerged from the April or August Open-Ended Working Group sessions. And many States have not yet joined the discussion to articulate their positions.

As we indicated on Monday, the United States believes that States should be informed, not only by the very important deliberations of the Working Group, but also by the results of the ten-year review of the Madrid International Plan of Action on Ageing, before taking a decision on whether a convention or other new mechanism is needed.

However, we would like to stress that that does not mean that nothing can or should be done on these issues between now and 2012. As panelists, delegations and other participants have noted, there are many actions that can be taken in the near term, without a new instrument or mechanism, to make a meaningful contribution to addressing the problems of the abuse of the rights of older persons and the challenges of the rapidly ageing populations in many countries. For example, along with the EU and others here, we support encouraging existing mandate holders to give the necessary attention to the rights of older persons within their mandates. We hope that the Working Group can focus on these near-term steps in a future session, while continuing its work to determine whether additional measures to strengthen the protection of the human rights of older persons are necessary in the longer term.

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5. Persons with Disabilities

In a July 25, 2011 proclamation, President Obama marked the 21st anniversary of the Americans with Disabilities Act (“ADA”). Daily Comp. Pres. Docs., 2011 DCPD No. 00527. The excerpts from the proclamation that follow advocate ratification and widespread implementation of the Convention on the Rights of Persons with Disabilities.

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Through the ADA, America was the first country in the world to comprehensively declare equality for citizens with disabilities. To continue promoting these principles, we have joined in signing the Convention on the Rights of Persons with Disabilities. At its core, this Convention promotes equality. It seeks to ensure that persons with disabilities enjoy the same rights and opportunities as all people, and are able to lead their lives as do other individuals.

Eventual ratification of this Convention would represent another important step in our forty-plus years of protecting disability rights. It would offer us a platform to encourage other countries to join and implement the Convention. Broad implementation would mean greater protections and benefits abroad for millions of Americans with disabilities, including our veterans, who travel, conduct business, study, reside, or retire overseas. In encouraging other countries to join and implement the Convention, we also could help level the playing field to the benefit of American companies, who already meet high standards under United States domestic law. Improved disabilities standards abroad would also afford American businesses increased opportunities to export innovative products and technologies, stimulating job creation at home.

Equal access, equal opportunity, and the freedom to make of our lives what we will are principles upon which our Nation was founded, and they continue to guide our efforts to perfect our Union. Together, we can ensure our country is not deprived of the full talents and contributions of the approximately 54 million Americans living with disabilities, and we will move forward with the work of providing pathways to opportunity to all of our people.

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The United States was an active participant at the Fourth Conference of States Parties to the Convention on the Rights of Persons with Disabilities (“Disabilities Convention”) in September 2011. On September 7, 2011, the United States participated in a round table discussion on Article 32 of the Convention and the role of international cooperation in supporting national implementation of the Convention. The U.S. statement is available at <http://usun.state.gov/briefing/statements/2011/172245.htm>. On September 8, 2011, U.S. State Department Special Advisor for International Disability Rights Judith Heumann addressed the Conference. Her remarks described U.S. government efforts to advance the rights of persons with disabilities, including President Obama’s July 25 proclamation, discussed above. Ms. Heumann’s remarks are available at <http://usun.state.gov/briefing/statements/2011/172249.htm>. Also on September 8, the United States provided a statement at the round table discussion on Article 27, “Realizing Work and Employment Opportunities.” That statement, describing U.S. domestic laws and programs to secure equal employment opportunities for persons with disabilities, is available at <http://usun.state.gov/briefing/statements/2011/172248.htm>.

Also on September 8, the United States delivered a statement at a round table discussion on Article 29 of the Convention, “Ensuring Effective and Full Participation in Political and Public Life.” That statement, excerpted below, is available in full at <http://usun.state.gov/briefing/statements/2011/172250.htm>.

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The United States is pleased to address Article 29’s critical focus on ensuring effective and full participation in political and public life. We are committed to ensuring that persons with disabilities have equal opportunities to participate in political and public affairs. We are working with members of civil society at home and internationally to empower individuals with disabilities to exercise their rights.

Multiple U.S. laws protect the rights to political participation for persons with disabilities. From the Voting Accessibility for the Elderly and Handicapped Act of 1984, through the National Voter Registration Act of 1993 (known as the “Motor Voter Act”), the Help America Vote Act (“HAVA”) of 2002, and the foundational antidiscrimination protections offered by Title II of the Americans with Disabilities Act and the Rehabilitation Act of 1973, the U.S. has adopted a comprehensive approach to making political participation accessible. The U.S. government provides technical assistance to and monitors local governments to ensure the full realization of political rights of persons with disabilities and takes strong enforcement actions when individuals are denied their rights. The federal government also works collaboratively with civil society to provide training and tools so that consumers and advocates can monitor local governmental actions and ensure that local governmental entities fully recognize the rights of persons with disabilities.

U.S. laws require the physical accessibility of all venues for civic participation, including polling places. The process of casting ballots also must be accessible. Our laws require that public entities afford all persons effective communication, so that persons with disabilities can fully participate in public affairs without barriers. U.S. laws further mandate that election officials and other governmental workers should be trained in the electoral process and the rights of persons with disabilities so that they can assist individuals with all types of disabilities, including psycho-social, sensory, developmental, and physical, to participate in the electoral process. Since 1999, the Justice Department's Project Civic Access has signed agreements with 193 local governments throughout the country to ensure full access to civic life for over 4 million persons with disabilities. These agreements, which were pursued after problems with compliance were raised, recognize that non-discriminatory access to public programs and facilities is a civil right, and that individuals with disabilities must have the opportunity to participate in local government programs, services and activities on an equal basis with their neighbors.

To assist state and local entities in meeting accessibility requirements, the Justice Department has created a number of guides, such as an ADA Best Practices Tool Kit for State and Local Governments and a checklist for accessibility of voting places. All of these materials are available at the federal government's key disability rights website, <http://www.ADA.gov>.

The effectiveness of the U.S. approach is highlighted by the number of persons with disabilities throughout the country who hold local, state, and federal public offices. Also, candidates in national elections routinely develop platforms on key disability issues, a practice that demonstrates the effectiveness of disability rights advocates in communicating their messages in the public sphere. In recognition of the political significance of voters with disabilities, many campaigns appoint staff that specifically focus on outreach to this voting community.

In sum, the United States is deeply committed to ensuring that all individuals with disabilities have the opportunity for effective and full participation in all aspects of political and public life. This commitment also is reflected in our cooperation with other countries. The Department of State and USAID are working as implementing partners in providing technical assistance to countries seeking to make their elections inclusive of disabled voters. We are happy to engage in informal discussions with States Parties throughout this Conference to provide additional information about our laws and programs to promote full participation in political and public life. We also look forward to hearing about the efforts that other States Parties and Signatories are making to ensure access to political and civic life.

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C. CHILDREN

1. Optional Protocols to the Convention on the Rights of the Child

The Third Optional Protocol to the Convention on the Rights of the Child, establishing a

complaint procedure, was negotiated and finalized in 2011. The United States co-sponsored a resolution at the United Nations General Assembly welcoming the conclusion of the Third Optional Protocol. The resolution was adopted by consensus on December 19, 2011. U.N. Doc. A/RES/66/138.

2. Children and Armed Conflict

a. Security Council

On July 12, 2011, the United Nations Security Council adopted a resolution on protecting children affected by armed conflict. U.N. Doc. S/RES/1998. The United States voted in favor of the resolution after working closely with other members of the Council to shape the text. Paragraph 3 of the resolution requested that the U.N. Secretary General identify in the annexes to his reports on children and armed conflict those parties to armed conflict that engage in recurrent attacks on schools or hospitals or persons related to schools or hospitals. Paragraph 21 of the resolution directed the Working Group on Children and Armed Conflict and the Special Representative for Children and Armed Conflict to consider within one year other options for increasing pressure on perpetrators of violations committed against children in situations of armed conflict. On July 12, Ambassador Rice addressed the Security Council during its debate on children and armed conflict and highlighted these provisions of the resolution. Her remarks are excerpted below and available in full at <http://usun.state.gov/briefing/statements/2011/168048.htm>. The United States continued to take an active role in the working group on children affected by armed conflict throughout 2011.

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We have increased the spotlight on grave abuses. We have built up our information-gathering capacity, including comprehensive reports by the Secretary General. We've listed serious perpetrators and frankly examined individual country situations. All these steps by the Working Group help keep such abuses squarely on the international agenda and bring them to the urgent attention of national authorities.

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This year's report also documents another appalling trend: increased attacks on schools and hospitals, particularly in Afghanistan, Cote d'Ivoire, DRC, Iraq, Burma, Pakistan, Yemen, and the Philippines. In Cote d'Ivoire alone, according to UNICEF, 224 schools were attacked during the post-election crisis, disrupting the education of some 65,000 children. The Secretary General's report documents such attacks, and with today's resolution, the Secretary General will have the mandate to "name and shame" those who perpetrate such attacks on a recurrent basis.

[O]verall we remain deeply concerned that persistent perpetrators continue their

violations against children with impunity. Sixteen parties to armed conflict listed in the Annexes of the Secretary General's report have been listed for five years or more. This is plainly unacceptable. Thus, the United States has urged the inclusion in today's resolution of the Council's time-bound commitment to consider a broad range of options to increase pressure on persistent perpetrators. The Council's unanimous support for this commitment is an important step toward holding egregious violators accountable for their actions.

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b. *Child soldiers*

Consistent with the Child Soldiers Prevention Act of 2008 ("CSPA"), Title IV of Public Law 110-457, the State Department's 2011 Trafficking in Persons report again listed the governments of Burma, Chad, Democratic Republic of the Congo, Somalia, Sudan, and Yemen as foreign governments that have violated the standards under the CSPA, i.e. governments of countries that have been "clearly identified" during the previous year as "having governmental armed forces or government-supported armed groups, including paramilitaries, militias, or civil defense forces, that recruit and use child soldiers," as defined in the CSPA. The full text of the TIP report is available at www.state.gov/g/tip/rls/tiprpt/2011/; discussion of designations under the CSPA is available at www.state.gov/g/tip/rls/tiprpt/2011/164224.htm#2. See *Digest 2010* at 244-46 for discussion of the CSPA designations in 2010. For additional discussion of the TIP report and related issues, see Chapter 3.B.3.

Absent further action by the President, the foreign governments designated in accordance with the CSPA are subject to restrictions applicable to certain security assistance and licenses for direct commercial sales of military equipment. In a memorandum for the Secretary of State dated October 4, 2011, President Obama determined that Chad has taken the necessary steps to allow for reinstatement of assistance, "that it is in the national interest of the United States to waive the application of the prohibition in section 404(a) of the CSPA with respect to Yemen," and that, with respect to the Democratic Republic of the Congo, it is in the national interest that the prohibition should be waived in part, "to allow for continued provision of International Military Education and Training and non-lethal Excess Defense Articles, and issuance of licenses for direct commercial sales of military equipment." Daily Comp. Pres. Docs., 2011 DCPD No. 00719; 76 Fed. Reg. 65,927 (Oct. 25, 2011). The accompanying memorandum of justification provided an explanation for the President's determination with respect to each country. The memorandum of justification is available at 76 Fed. Reg. 65,928-65,931 (Oct. 25, 2011).

3. Resolutions on Rights of the Child

a. *Human Rights Council*

At the 16th Session of the Human Rights Council, the United States co-sponsored a resolution on the rights of the child. On March 23, 2011, the United States delivered a

general statement on the resolution, set forth below and available at <http://geneva.usmission.gov/2011/03/23/rights-chil/>. The resolution was adopted by consensus at the 16th Session. U.N. Doc. A/HRC/RES/16/12.

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...The United States is extremely pleased to co-sponsor the “Rights of the Child resolution: a holistic approach to the protection and promotion of the rights of children working and/or living in the streets” and thanks the co-sponsors for their transparency and flexibility during the negotiations. Consistent with the principles of the Convention on the Rights of the Child and its Optional Protocols and the objectives expressed in the resolution, the United States continues its domestic efforts to strengthen already existing protections for children and to pursue new and innovative ways of ensuring that the rights of children are realized.

The plight of homeless and runaway children at risk of exploitation is a global concern. The problem occurs internationally, from the city to the countryside, in affluent areas as well as in poor. Homeless children go to great lengths to stay out of sight and out of mind of the public and the authorities. They endure terrible circumstances as a result, and it is our job as concerned human beings and responsible governments to care, to take notice, and to give these children hope for a brighter future. We need to help these children find access to a caring adult, a secure home, an education, and a sustainable future.

Domestically, the United States Government is strongly committed to fighting homelessness, including for children. To contribute to this effort, President Obama included \$1.5 billion in the stimulus bill for the Homelessness Prevention and Rapid Re-Housing program in 2010.

In addition, through the USG’s Department of Health and Human Services, the Administration on Children, Youth and Families program awarded a total of \$48.6 million to 362 Basic Center Programs. The Basic Center Programs provided shelter to 44,929 youth up to age 18 or higher in some U.S. states. The youth received services including counseling, life skills training, and physical health care.

Internationally, the United States government provides significant resources to assist highly vulnerable children, including homeless and runaway children who are at risk of exploitation. There is an array of separate programs led and managed by over 20 different offices in seven USG agencies. These offices funded approximately 1,900 projects in 107 countries in fiscal year 2009. It is important to underscore that the United States considers prostitution of children to be a serious form of exploitation and that child prostitution should never be considered a legitimate form of work. This of course applies to homeless and runaway children who are at risk of exploitation.

Today we join consensus/co-sponsor on this resolution with the express understanding that it does not imply that States must become parties to instruments to which they are not a party nor that they must implement obligations under human rights instruments they are not a party to. By joining this resolution, we do not recognize any change in the current state of treaty or customary international law. Further we understand the resolution’s reaffirmation of prior documents to apply to those who affirmed them initially. Finally we understand that the term

“right of protection” in the resolution refers to Article 3(2) of the Convention which obligates States Parties “to ensure the child such protection and care as is necessary for his or her well-being.”

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b. General Assembly

On December 19, 2011, the General Assembly adopted by consensus its annual resolution on the rights of the child. U.N. Doc. A/RES/66/141. U.S. Deputy Representative Sammis delivered a statement on November 22, 2011 before the Third Committee adopted the resolution. Mr. Sammis’ statement is excerpted below and available in full at <http://usun.state.gov/briefing/statements/2011/177942.htm>.

* * * *

The United States is extremely pleased to co-sponsor the “Rights of the child” resolution today. Throughout the lengthy negotiations we welcomed the transparency, flexibility and support of the sponsors and other negotiating partners. This resolution highlights the important issue of protecting children with disabilities and to ensure that their interests and rights are safeguarded, and that they are equal participants in society. The United States is committed to advance the wellbeing of all children, including children with disabilities, and is committed to work with our partners in this room and around the world to advance the protection of these vulnerable children.

Our domestic efforts include the Individuals with Disabilities Act, or IDEA. This landmark legislation mandates programs and services, including special education services, that actively support states and localities in guaranteeing individuals with disabilities a free and appropriate public education. IDEA currently supports the education of over six million children and youth and 322,000 infants and toddlers with disabilities. Over more than three decades, IDEA has resulted in more young children with disabilities receiving high-quality early interventions that prevent or reduce future need for services. In addition, more children with disabilities are not only attending mainstream schools, but are also receiving access to the general education curriculum and learning a wide variety of academic skills.

The United States co-sponsors this resolution today with the express understanding that it does not imply that States must become parties to instruments to which they are not a party or implement obligations under human rights instruments to which they are not a party and, by co-sponsoring this resolution, we do not recognize any change in the current state of treaty or customary international law. Further we understand the resolution’s reaffirmation of prior documents to apply to those who affirmed them initially. Moreover, we note that references to transfer of technology in UN resolutions should refer to technology transfers on mutually agreed terms. We hope to continue working with the co-sponsors and other delegations next year.

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4. Resolution on the Girl Child

On December 19, 2011, the General Assembly adopted by consensus a resolution on “the girl child.” U.N. Doc. A/RES/66/140. The United States co-sponsored the resolution when it was under consideration in the Third Committee. U.S. Deputy Representative Sammis delivered the U.S. Statement on the resolution on November 22, 2011. Mr. Sammis’ statement is excerpted below and available in full at

<http://usun.state.gov/briefing/statements/2011/177947.htm>

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The United States is pleased to co-sponsor this resolution and appreciates the efforts of the delegation of Angola to reach consensus and to address several of our concerns. The fact that the “Girl Child” resolution receives such broad support demonstrates that the international community recognizes that there is a need to focus on such issues as the discrimination against girls, health, education, poverty and early marriage.

The United States is committed to bettering the lives of women and girls, not just because it’s the right thing to do, but because it is also the smart thing to do.

We are committed to focusing on empowering women and girls, not just as beneficiaries of development, but as agents of transformation. By considering women and girls in all of our policy initiatives, global health, food security, climate change, economic issues, human rights, and peace and security we can make those initiatives stronger and more successful.

We note that we co-sponsor this resolution today with the understanding that the resolutions’ reaffirmation of prior documents applies to those who affirmed them initially. We look forward to continue working on the “Girl Child” resolution in 2013.

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D. ECONOMIC, SOCIAL, AND CULTURAL RIGHTS, AND RELATED ISSUES

1. Overview

On March 24, 2011, Michael H. Posner, Assistant Secretary of State for Democracy, Human Rights, and Labor, delivered an address, entitled “The Four Freedoms Turn 70,” to the American Society of International Law in Washington, D.C. The address is excerpted below and available in full at

www.state.gov/j/drl/rls/rm/2011/159195.htm.

* * * *

[President Franklin D.] Roosevelt's premise was that our liberty rested on Four Freedoms: freedom of speech and expression, freedom to worship, freedom from fear, and freedom from want. He identified freedom of speech and freedom to worship as core civil and political rights, just as we do now. He defined "freedom from fear" as a reduction in arms, so as to diminish our collective destructive capabilities... And with the indelible phrase—"freedom from want"—Roosevelt linked the liberty of our people with their basic economic and social wellbeing. This concept is being echoed today on the streets of Cairo, Tunis and other Arab cities.

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There are many ways to think about what should or should not count as a human right. Perhaps the simplest and most compelling is that human rights reflect what a person needs in order to live a meaningful and dignified existence. It is the core belief in the supreme value of human dignity that leads us, as Americans, to embrace the idea that people should not be tortured, discriminated against, deprived of the right to choose their government, silenced, or barred from observing the religion of their choosing. As President Obama has made clear, it is this same belief in human dignity that underlies our concern for the health, education, and wellbeing of our people.

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Today I want to re-examine those moral cornerstones, the Four Freedoms, as Roosevelt defined them, and ... I want to explain how we think about the economic and social rights that derive from Roosevelt's freedom from want.

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...Egyptians need the freedom from fear that the State Security police will knock on their door in the night or hack their Facebook pages. And they also need decent jobs for the nearly one-fifth of the population that is still living on less than \$2 a day.

As Roosevelt put it, "People who are hungry and out of a job are the stuff of which dictatorships are made."

President Obama echoed this theme in his Nobel Prize speech in December 2009, when he said, "Just peace includes not only civil and political rights—it must encompass economic security and opportunity. For true peace is not just freedom from fear, but freedom from want."

Although the freedom from want is not explicitly contained in the U.S. Constitution, concern about the economic wellbeing of the American populace is deeply embedded in our nation's history and culture.

After all, in the Preamble to the Constitution, the Framers aimed to "promote the general welfare." From our earliest days, state laws and constitutions sought to promote our people's economic security. And the American Dream is predicated on the belief that allowing individuals to flourish is the best way for our nation to flourish.

Nevertheless, the United States has had reservations about the international debate on economic, social and cultural rights, for reasons I will discuss in a moment.

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The United States has taken steps to provide for economic, social and cultural rights but we understand them in our own way and, at any given time, we meet them according to our domestic laws—laws that emerge from a political system based on representative democracy, free speech and free assembly.

But since the founding of the UN, some Americans have worried that the international movement to recognize economic, social and cultural rights would obligate us to provide foreign assistance commitments that went beyond what was decided by the U.S. This has never been true. Human rights law doesn't create an obligation to any particular level of foreign assistance.

The U.S. is a leading contributor to global efforts to alleviate poverty and promote development—not because we have an *obligation* to but because it is in our interest. We do this through our bilateral aid programs, through our multilateral contributions, and through the American people—who annually contribute financially and through voluntary service to development and humanitarian activities around the world. ...

Some have also been concerned that using the language of human rights could create new domestic legal obligations that would be enforceable through the courts and tie the hands of Congress and the states. But we have been careful to ensure that any international agreements we endorse protect the prerogatives of the federal government, as well as those of our states and localities.

Under the U.S. federal system, states take the lead on many economic, social and cultural policies. For example, all 50 states are committed through their constitutions to providing education for all children. But our federal Constitution makes no mention of rights to education, health care, or social security.

Nevertheless, as my late friend and mentor Professor Louis Henkin wrote, once economic and social rights are granted by law, they cannot be taken away without due process. And these rights also fall under the general requirement that government act rationally and afford equal protection under the law.

Our government's commitment to provide for the basic social and economic needs of our people is clear, and it reflects the will of the American people.

The people ask us to care for the sick... and we do. ...

They ask us to provide shelter for the destitute... and we do. ...

They ask us to educate every child, including those with physical and learning disabilities... and we do. ...

Some of our suspicion of the international focus on economic, social and cultural rights springs from the misuse of these demands in earlier times. For decades, the Soviet states and the Non-Aligned Movement critiqued the United States for a perceived failure to embrace economic and social rights. They used the rhetoric of economic, social and cultural rights to distract from their human rights abuses. They claimed economic rights trumped political rights, while in fact failing to provide either. We have prioritized political and civil rights because governments that are transparent and respect free speech are stable, secure and sustainable—and do the most for their people.

It is time to move forward. The Obama administration takes a holistic approach to human rights, democracy and development. Human rights do not begin after breakfast.

But without breakfast, few people have the energy to make full use of their rights. As Martin Luther King once noted, an integrated lunch counter doesn't help the person who can't afford to eat there.

Therefore, we will work constructively with like-minded delegations to adopt fair and well-reasoned resolutions at the UN that speak to the issues of economic, social and cultural rights and are consistent with our own laws and policies.

We will do this understanding that these goals must be achieved progressively, given the resources available to each government. But we will also stress that nothing justifies a government's indifference to its own people. And nothing justifies human oppression—not even spectacular economic growth.

When negotiating language on these resolutions and in our explanations of position, we will be guided by the following five considerations:

- First, economic, social and cultural rights addressed in UN resolutions should be expressly set forth, or reasonably derived from, the Universal Declaration and the International Covenant on Economic, Social and Cultural Rights. While the United States is not a party to the Covenant, as a signatory, we are committed to not defeating the object and purpose of the treaty.
- Second, we will only endorse language that reaffirms the “progressive realization” of these rights and prohibits discrimination.
- Third, language about enforcement must be compatible with our domestic and constitutional framework.
- Fourth, we will highlight the U.S. policy of providing food, housing, medicine and other basic requirements to people in need.
- And fifth, we will emphasize the interdependence of all rights and recognize the need for accountability and transparency in their implementation, through the democratic participation of the people.

At the same time, the U.S. will not hesitate to reject resolutions that are disingenuous, at odds with our laws, or contravene our policy interests. Just because a resolution is titled “a right to food” doesn't mean it is really about the right to food. Resolutions are not labeling exercises. Rather, they are about substance.

Finally, we will push back against the fallacy that countries may substitute human rights they like for human rights they dislike, by granting *either* economic *or* political rights. To assert that a population is not “ready” for universal human rights is to misunderstand the inherent nature of these rights and the basic obligations of governments.

All Four Freedoms are key to the Obama administration approach to human rights, national security and sustainable global prosperity.

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Freedom from want in foreign policy today means a U.S. leadership role in a global food security initiative that aims to help subsistence farmers expand their production and developing countries to develop their markets. It also means being the world's leader in global health—providing treatment for those infected by HIV, and strengthening health systems in developing countries. It also includes our recent pledge

of \$150 million in economic aid and democracy assistance to Egypt to help during this time of transition.

For our domestic policy today, freedom from want means this Administration will keep fighting to bring health care to more Americans, improve education to make our country more competitive, and continue to provide unemployment benefits for those who need them. Despite our budget constraints, we will continue to invest in the future of the American people.

We will also continue to urge other countries to invest in a better future for their citizens. And we stand willing to assist by pursuing an approach to development that respects human rights, involves local stakeholders, promotes transparency and accountability, and builds the institutions that underpin sustainable democracy.

This is in our moral interest, our political interest and our strategic interest.

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2. Health Care

On June 1, 2011, at the UN Human Rights Council, the United States provided an intervention in response to a report issued by Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health Anand Grover. U.N. Doc. A/HRC/RES/17/25. The U.S. intervention is excerpted below and available in full at www.state.gov/s/l/c8183.htm.

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The United States and other countries have long agreed that all people everywhere have “the right to the enjoyment of the highest attainable standard of health.” ...

However, we do not agree with all of the human rights conclusions started in [Special Rapporteur] Grover’s report. This “right to health framework” is not well-defined, nor, even more importantly, is it necessarily beneficial to the advancement of the two purposes at stake here, human rights and public health. We would prefer to see the Special Rapporteur adopt a different approach to his mandate that advances these crucial purposes.

Any approach must use evidence-based objective evaluations. Evidence-based decision-making is critical for transparency and accountability. While human rights considerations are significant to health policy decisions, they must complement and not replace fact-based decision-making.

Although we disagree with many of the report’s conclusions, we appreciate the human rights analysis of treatment of people with HIV/AIDS.

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At the UN Human Rights Council on September 16, 2011, U.S. delegate Amy McGann delivered a statement, entitled “States Must Give Priority Attention to the Health Situation

of Older Persons,” in a panel discussion on the right to health of older persons. That statement is excerpted below and available in full at

<http://geneva.usmission.gov/2011/09/16/health-situation-of-older-persons/>.

* * * *

...While the right of everyone to the enjoyment of the highest attainable standard of physical and mental health applies not only to older persons, but to persons of all ages, in general older persons have increased health concerns. ...

The United States has strong laws, policies, and programs in place aimed towards establishing and protecting the rights, dignity, and independence of older persons. Four pieces of legislation—the Social Security Act, Medicare, Medicaid, and the Older Americans Act—form the foundation of economic, health, and social support for millions of seniors, individuals with disabilities, and their families. These programs have enabled millions of older Americans to live more secure, healthy, and meaningful lives.

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Our approach in the United States is consistent with the UN Principles for Older Persons and their goal of ensuring that states give priority attention to the situation of older persons. The UN Principles state that older persons should have access to health care, services, and appropriate institutional care, as well as the opportunity to enjoy their human rights.

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3. Food

a. Human Rights Council resolution

On March 25, 2011 at the 16th session of the Human Rights Council, the United States joined consensus on a resolution on the right to food. U.N. Doc. A/HRC/RES/16/27. U.S. delegate Patrick Riley delivered the explanation of the U.S. position on the resolution, which is excerpted below and available in full at <http://geneva.usmission.gov/2011/03/25/eop-right-to-food/>.

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The United States is pleased to be able to join consensus on this resolution on the right to food. Food is essential to the rights of all people to an adequate standard of living, as recognized in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, and is also an interdependent with the protection of other human rights. ...

Our government's commitment to provide for the basic social and economic needs of our people is clear, and it reflects the will of the American people. Public authorities throughout the United States take significant measures to support access to food and food production in the United States, including prohibiting discrimination in such programs, and these are protected by law. It is in this spirit we join consensus. Securing the right to food must be achieved progressively, given the resources available to each government, through transparent and democratic processes. But we will also stress that nothing justifies a government's indifference to its own people. We stated our position on the right to food under international law last year, in response to resolution 13/4.**

We note that this resolution continues to include a large number of extraneous and inappropriate topics which do little to protect or contribute to the progressive realization of the right to food. ...

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While we join this resolution's welcoming the work of the Committee on Economic, Social and Cultural Rights, including its General Comment No. 12, we note significant disagreements with some portions of its work and that General Comment.

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b. General Assembly resolution

On December 19, 2011, the UN General Assembly adopted by consensus a resolution on the right to food. U.N. Doc. A/RES/66/158. On November 22, 2011, U.S. Deputy Representative Sammis explained the U.S. decision to join consensus on the resolution during the Third Committee's consideration of the text. That explanation of position is excerpted below and available in full at <http://usun.state.gov/briefing/statements/2011/177943.htm>.

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The United States is pleased to be able to join consensus on this resolution on the right to food.

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We support the right of everyone to an adequate standard of living, including food, as recognized in the Universal Declaration of Human Rights. The United States is not a party to the

** Editor's note: See *Digest 2010* at 251-54 for a discussion of, and excerpts from, the U.S. explanation of position on resolution 13/4 on the right to food, adopted at the 13th session of the Human Rights Council.

International Covenant on Economic, Social and Cultural Rights, and joining consensus on this resolution does not recognize any change in the current state of conventional or customary international law regarding rights related to food. It is our objective to achieve a world where everyone has adequate access to food, but we do not treat the right to food as an enforceable obligation.

We interpret this resolution's references to the right to food, with respect to States Parties to the aforementioned Covenant, in light of its Article 2(1), in which they undertake to take steps with a view to achieving progressively the full realization of economic, social, and cultural rights. We interpret this resolution's references to member States' obligations regarding the right to food as applicable to the extent they have assumed such obligations.

And while the United States has for the last decade been the world's largest food aid donor, we do not concur with any reading of this resolution that would suggest that states have particular extraterritorial obligations arising from a right to food. While we join this resolution's welcoming the work of the Committee on Economic, Social and Cultural Rights, including its General Comment No. 12, we note significant disagreements with some portions of its work and that General Comment. We interpret this resolution's reaffirmation of previous documents as applicable to the extent countries affirmed those documents in the first place.

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4. Water and Sanitation

a. Human Rights Council resolution

The United States joined consensus on the UN Human Rights Council resolution on "The Human Right to Safe Drinking Water" on September 18, 2011. U.N. Doc. A/HRC/RES/18/1. Ambassador Donahoe delivered an explanation of position, excerpted below and available at www.state.gov/s/l/c8183.htm.

* * * *

There can be no question of the increasing importance of water as an issue. ...

... [T]he United States remains deeply committed to addressing these global challenges. Safe drinking water and sanitation are essential to the rights of all people to an adequate standard of living, and to the enjoyment of the highest attainable standard of physical and mental health.

* * * *

Accordingly, the United States is pleased to join consensus today and read this resolution's references to the right to safe drinking water and sanitation in accordance with our July 27, 2011 statement in New York at the UNGA plenary meeting [Editor's note: see section D.4.c. below] and our September 30, 2010 statement here in Geneva on safe drinking water and sanitation [Editor's note: see *Digest 2010* at 250-51]. We appreciate the acknowledgement in this resolution that questions of international watercourse law and all transboundary water issues are

outside the scope of this right. OP 5 and OP7 call upon states to take a number of actions—most of which are laudable. However, the drafting of some of these requests is overly broad, while others are overly specific. While we share the spirit and the objectives that appear to motivate these requests, including that all should enjoy access to safe drinking water and sanitation, in light of our concerns about some of their specific details and phrasings, we understand them to be aspirational. Finally, we were pleased to see a reference to private actors’ responsibility to respect human rights and we emphasize the obligation of state entities to protect human rights.

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b. Independent Expert’s Mission to the United States

Then-UN Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation Catarina de Albuquerque (her position’s title changed on March 24, 2011 to “Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation”) conducted an official mission to the United States from February 22 to March 4, 2011. She presented her report of this mission to the UN Human Rights Council on August 2, 2011. U.N. Doc. A/HRC/18/33/Add.4. On September 15, 2011, U.S. delegate John Mariz delivered the U.S. statement at the interactive dialogue with the special rapporteur. That statement is available at <http://geneva.usmission.gov/2011/09/15/u-s-statement-at-the-hrc-dialogue-on-the-right-to-drinking-water-and-sanitation/> and is excerpted below.

* * * *

We underscore our commitment to providing safe and clean drinking water and proper sanitation to the American people. The United States is understandably proud of the tremendous accomplishments it has made in the past decades to provide its citizens with clean water at an affordable price. As the special rapporteur notes in her report, 92 percent of the population was served by water systems which met mandatory health standards. In addition, the U.S. far exceeds World Bank guidelines on affordability, as combined water and sewage bills average only 0.5 percent of household income.

While we recognize the challenges presented by the report, we have conveyed to the rapporteur our concerns that the report often focuses on anecdotes that do not fairly depict the state of drinking water and sanitation in the United States. Moreover, the report makes some factual errors and does not cite sources for some statistics.

The United States also acknowledges that some indigenous communities face significant challenges with respect to access to safe drinking water and sanitation. However, the United States is taking steps to address these challenges in conjunction with Tribal and State governments. For example, the United States has established a partnership across federal government agencies that brings together expertise and resources to address access issues, including funding of the construction of water and sanitation systems for indigenous communities. Furthermore, some of the issues raised regarding indigenous peoples are unrelated to their access to water and sanitation, and—to the extent they need to be addressed—would be more appropriately addressed by other special procedure mandate holders.

The report does not take into full account the federal system of the United States, where a number of the issues raised may be most feasibly handled at the state or local level rather than through federal action. As the report notes, water in the United States is governed by a complex amalgam of federal and state statutes which make it hard to make generalizations; however, given the broad range of issues and situations in our country, it is impossible to have a one-size-fits-all solution.

As the report points out, there are considerable challenges that exist, such as in replacing aging infrastructure and providing drinking water to remote communities. We will give the report's recommendations due consideration.

We look forward to continuing to work with the special rapporteur to take concrete action to reduce the number of people without sustainable access to safe drinking water and basic sanitation.

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c. U.S remarks at the General Assembly

On July 27, 2011, U.S. Representative to ECOSOC Frederick D. Barton addressed the plenary meeting of the UN General Assembly on the issue of the human right to safe drinking water and sanitation. His remarks are excerpted below and available in full at <http://usun.state.gov/briefing/statements/2011/169199.htm>.

* * * *

The United States is deeply committed to finding solutions to our world's water challenges. ...

At the September 2010 session of the UN Human Rights Council in Geneva, the United States joined consensus on a resolution that affirms "that the human right to safe drinking water and sanitation is derived from [one], the right to an adequate standard of living and [two] inextricably related to the right to the highest attainable standard of physical and mental health." Both tenets are drawn from the Covenant on Economic, Social and Cultural Rights, and they call upon governments to take steps towards the progressive realization of this human right. In March at the Human Rights Council, the United States supported the renewal of the mandate of the independent expert on this issue.

In the context of the human right to safe drinking water and sanitation, we believe the following:

- First, governments should strive to progressively realize universal access to safe drinking water and sanitation, and should seek to expand access, especially for underserved populations. Governments should develop and implement national policies and strategies, where needed, and commit sufficient budgetary resources so that they will be able to advance this goal as quickly as possible.

- Second, governments have an obligation to ensure that access to safe drinking water and sanitation services is provided on a nondiscriminatory basis. Governments also have obligations to provide, or ensure access to, safe drinking water and sanitation to persons in their custody.

· Third, the right to safe drinking water and sanitation can reasonably be interpreted to include access to cooking water. It can also be reasonably understood to mean water in sufficient quantity and quality—although not necessarily potable quality—to meet basic needs regarding personal hygiene.

· Finally, in support of all of this, governments should work towards greater transparency and accountability in water and sanitation service provision and include the public in government decision making. Good governance is fundamental to the achievement of a right to safe drinking water and sanitation.

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5. Cultural Issues

a. *Human Rights Council resolution*

On June 17, 2011, the United States joined consensus on the Human Rights Council resolution “Promotion of the enjoyment of cultural rights of everyone and respect for cultural diversity.” U.N. Doc. A/HRC/RES/17/15. The United States’ explanation of position, delivered on June 17, 2011, is excerpted below and available at www.state.gov/s/l/c8183.htm.

* * * *

... [T]he United States continues to support the promotion of cultural diversity, pluralism, tolerance, cooperation and dialogue among people from all cultures. In this spirit, we are pleased to join consensus. Cultural diversity has played a critical role in our own country’s history, which shows that cultural diversity can strengthen human rights. Respect for our differences has contributed to the significant legal protections for members of minority groups.

Human rights are universal, and all governments are responsible for abiding by their obligations under international human rights law. We believe that respect for human rights also substantially enhances respect for diversity. We do have concerns, however, that the concept of cultural diversity, particularly when espoused in a human rights context, could be misused. Cultural diversity should neither be used to undermine or limit the scope of human rights, nor to justify or legitimize human rights abuses. We would like to reinforce that efforts to promote cultural diversity should not infringe on the enjoyment of human rights. Instead, cultural diversity and international human rights can be mutually reinforcing concepts that help us all achieve a better world.

Certain cultural rights are set forth in Article 27 of the UN Declaration on Human Rights, as well as in other human rights instruments. The relevant instruments state that economic, social and cultural rights are to be progressively realized. With regard to the paragraphs of this resolution that take note of the Independent Expert’s report and of the experts’ meeting, we disagree with the conclusions of that report and meeting insofar as they purport to recognize a new right to access and enjoy cultural heritage.

* * * *

b. General Assembly resolution

The United States voted against UN General Assembly resolution 66/154, Human Rights and Cultural Diversity. U.S. Deputy Representative Sammis delivered an explanation of vote to the Third Committee on November 22, 2011. That explanation, excerpted below, is available in full at <http://usun.state.gov/briefing/statements/2011/177940.htm>.

* * * *

The United States continues to support the promotion of cultural pluralism, tolerance, cooperation and dialogue among individuals from different cultures and civilizations. ...

Cultural diversity has played a critical role in our own country's history, which shows that cultural diversity can strengthen human rights. We are concerned, however, that the concept of "cultural diversity" as put forward in this resolution could be misused to legitimize human rights abuses. Human rights are universal. Respect for them substantially enhances the respect for diversity we all seek.

Efforts to promote cultural diversity should not infringe on the enjoyment of human rights, nor justify limitations on their scope. By raising the concept of cultural diversity to the level of an essential objective while failing to reflect such potential concerns about its misuse, this resolution misrepresents the relationship between cultural diversity and international human rights law.

A more balanced and accurate characterization of cultural diversity and its relationship with human rights law is presented in the UN Human Rights Council's resolution 17/15, "Promotion of the enjoyment of cultural rights of everyone and respect for cultural diversity," on which the United States joined consensus in June 2011. Furthermore, in this context we do not believe that UNESCO should take up initiatives aimed at promoting intercultural dialogue on human rights.

* * * *

c. Statement at Human Rights Council

On May 31, 2011, the United States participated in an interactive dialogue at the UN Human Rights Council with Special Rapporteur in the Field of Cultural Rights Farida Shaheed. The U.S. intervention, available at www.state.gov/s/l/c8183.htm, included the following statement:

The United States thanks Independent Expert on Cultural Rights Shaheed for her report, which explores a need for a human rights-based approach to cultural heritage. ... We do not agree with all of her statements about the relationship

between human rights and cultural heritage. In particular, some statements of what governments should or must do, such as obtaining consent of concerned communities before acting to protect cultural heritage, seem sensible as general principles or policies, but may have exceptions and are not necessarily obligations of human rights law.

6. Hazardous waste

The United States joined consensus on UN Human Rights Council resolution 18/11, “Mandate of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and waste,” on September 29, 2011. Ambassador Donahoe delivered an explanation of position on the same day, which is excerpted below and available in full at www.state.gov/s/l/c8183.htm.

* * * *

The United States recognizes that improper management and disposal of hazardous substances and wastes may have implications for the effective enjoyment of human rights, including civil, political, economic, social, and cultural rights. Accordingly, we join consensus on this resolution.

* * * *

We would note some concerns with the resolution, however. As an initial matter, we reiterate our general concern regarding the approach of placing environmental issues in the human rights context, particularly where, as here, venues other than this Council have the mandate and the technical expertise to address the environmental issue under discussion. As specific concerns, this resolution’s text could make more consistent its varied descriptions of possible implications for the effective enjoyment of human rights. Where the resolution notes concerns that may arise from “movements” of hazardous substances and wastes, we understand this to address, more specifically, uncontrolled and illegal movements.

We are also particularly concerned about one of the possible topics that the Special Rapporteur may report on, concerning the possibility of ambiguities in international instruments and gaps in effectiveness of international regulatory mechanisms. We understand this part of the mandate to be interpreted within the larger mandate of the Human Rights Council. In that respect, it would of course focus solely on human rights issues and, consistent with the preamble of the resolution, avoid overlap with the competence of expert, non-human rights international instruments and entities. We also understand that this mandate should not presume conclusions about such instruments and entities that are not necessarily warranted. Accordingly, we hope that the Special Rapporteur will take care to address possible human rights implications, rather than non-human rights issues involving how to manage and dispose of hazardous

substances and wastes, and rather than interpreting environmental treaties that are beyond his authority or mandate.

Finally, we also ask that the Council consider carefully, in three years' time, whether the work of this Special Rapporteur, which at that point will have been ongoing for 20 years, will be complete at the end of the term that is being renewed today.

* * * *

7. Foreign Debt and Human Rights

On March 24, 2011, the United States voted against a Human Rights Council resolution extending the mandate of the independent expert on the effects of foreign debt and other related international obligations of states on the full enjoyment of all human rights, particularly economic, social and cultural rights. The resolution was adopted by a vote of 29 in favor, 13 against, with 4 abstentions. U.N. Doc. A/HRC/RES/16/14. U.S. delegate Mark Cassayre delivered the explanation of the U.S. vote, excerpted below and available in full at <http://geneva.usmission.gov/2011/03/23/eov-foreign-debt/>.

* * * *

The United States has long recognized the potentially harmful effects that excessive debt burdens can have on developing countries, especially Heavily Indebted Poor Countries. As such, debt relief continues to be an essential part of the United States' foreign aid program...

However, we continue to believe that it is incorrect to treat the issue of foreign debt as a human rights problem to be addressed by this Council. Rules other than human rights law are most relevant to the contractual arrangements between States and lenders. There are other international fora which are much better equipped to deal with the questions of foreign debt and debt forgiveness, which are principally economic and technical in nature.

Unfortunately, continuing the mandate of the independent expert does not simply further the inappropriate treatment of this important issue as a human rights problem. It also diverts the focus and finances of this Council away from serious human rights issues that more urgently require our attention. Given the Human Rights Council's lack of technical competency on this subject, we regret that resources continue to be allocated of to this subject. The Council's limited time and resources should be deployed in other, more appropriate and effective ways.

We therefore must vote against this resolution.

* * * *

8. Development

a. U.S. Statement at the Human Rights Council

On September 14, 2011, at the 18th session of the Human Rights Council, Ambassador Donahoe delivered a statement at a panel discussion on the realization of the right to development. Ambassador Donahoe's statement is excerpted below and is available in full

at <http://geneva.usmission.gov/2011/09/14/making-right-to-development-a-uniting-rather-than-divisive-issue-on-the-human-rights-agenda/>.

* * * *

The United States has some well-known concerns about the “right to development.” To move forward, we would like to consider ways we can work together constructively and make the right to development a uniting, rather than divisive, issue on the international human rights agenda.

Fostering development continues to be a cornerstone of U.S. international engagement, and we are the largest bilateral donor of overseas development assistance...

The United States is committed to development, but we continue to have concerns about the direction discussions on the right to development have taken over the years.

We are willing to work with the proponents of the right to development to expand the consensus on this topic in a way that will be mutually beneficial, if we take into account the following five points:

First, discussions and resolutions on the right to development should not include unrelated material on controversial topics, particularly topics that are being addressed elsewhere. For example, the most recent version of the annual UNGA Third Committee resolution on the right to development contains 41 operative paragraphs, as opposed to four operative paragraphs in the most recent Human Rights Council resolution on the same topic.

Second, we are not prepared to join consensus on the possibility of negotiating a binding international agreement on this topic. At the very least, we would need more of a shared consensus on the definition and nature of the right to development before considering whether such a time- and resource-intensive course of action would be necessary and beneficial.

Third, theoretical work is needed to define the right to development and in particular to explain how it is a human right, *i.e.*, a universal right that every individual possesses and may demand from his or her own government. This fundamental concern has not been adequately addressed.

Fourth, the recent efforts to come up with numeric or concrete indicators of development and its progress are interesting and warrant serious further consideration, though these efforts should leverage, not duplicate, the statistics of the World Bank, International Monetary Fund, regional UN statistical agencies, and the work done to monitor the Millennium Development Goals.

Finally, discussion of this topic needs to focus on aspects of development that relate to human rights, *i.e.*, those of individuals. Of course, that includes all human rights, civil and political as well as economic, social and cultural rights.

While we are strong supporters of international development, we have long expressed significant concerns about some understandings and interpretations of the right to development. We are willing to work to address those concerns in order to move forward on this important topic.

* * * *

b. Human Rights Council resolutions

On March 25, 2011, the Human Rights Council adopted a resolution on the right to development. U.N. Doc. A/HRC/RES/16/117. The United States abstained from the vote on the resolution, as explained in the explanation of vote delivered by U.S. delegate Mark J. Cassayre. That March 25 explanation of vote is available at <http://geneva.usmission.gov/2011/03/25/eov-right-to-development/> and is not excerpted herein; it was similar in substance to the September 30, 2011 explanation of vote that is excerpted below.

On September 30, the United States abstained from the vote on UN Human Rights Council resolution 18/26 on the Right to Development. Ambassador Donahoe delivered the U.S. explanation of vote, excerpted below and available in full at www.state.gov/s/l/c8183.htm.

We have stated very clearly that we are not prepared to join consensus on the possibility of negotiating a binding international agreement based on concepts that the right to development currently envisages. . . . We are disappointed that the suggestions to add previously-accepted language from the Vienna Declaration, reaffirming [that] the human person is the central subject of development, were not given due consideration.

Nevertheless, we will engage constructively with the Open-Ended Working Group on the Right to Development, during its upcoming session on November 14-18. . . .

* * * *

The United States delegation was pleased to be able to participate in the panel discussion on “the way forward in the realization of the right to development.” And we are committed to finding ways we can work together constructively and make the right to development a uniting, rather than divisive, issue on the international human rights agenda. ...[W]e have decided we must call a vote and abstain on this resolution because it does not take into account one of our core concerns.

We have stated very clearly that we are not prepared to join consensus on the possibility of negotiating a binding international agreement based on concepts that the right to development currently envisages. ...

...[W]e are disappointed that the suggestions to add previously-accepted language from the Vienna Declaration, reaffirming [that] the human person is the central subject of development, were not given due consideration.

Nevertheless, we will engage constructively with the Open-Ended Working Group on the Right to Development, during its upcoming session on November 14-18. ...

* * * *

c. General Assembly resolutions

(1) World Summit for Social Development

The United States joined consensus on UN General Assembly resolution 66/125, “Implementation of the Outcome of the World Summit for Social Development and of the twenty-fourth special session of the General Assembly.” U.S. Deputy Representative Sammis delivered an explanation of position to the Third Committee on November 29, 2011. That explanation, excerpted below, is available in full at <http://usun.state.gov/briefing/statements/2011/177944.htm>.

* * * *

The United States is pleased to join consensus on this resolution. We share, and in fact strongly support, the stated goals of this resolution: poverty eradication, full and productive employment and decent work for all, and social inclusion...

Furthermore, we strongly endorse the resolution’s highlighting of the need to promote respect for all human rights and fundamental freedoms in the context of development. The interdependence of human rights is significant in that context—it is imperative that governments respect people’s civil and political rights while achieving the progressive realization of economic, social and cultural rights. Governments need to follow democratic, transparent and accountable processes while doing so.

We also support the attention given in the resolution to the rights of indigenous peoples, which is consistent with U.S. support for the United Nations Declaration on the Rights of Indigenous Peoples, as explained in the Announcement document that accompanied President Obama’s statement of support.

That said, we must reiterate many of the same concerns that we have voiced about previous versions of this resolution. Once again, we regret that the resolution does not strike a better balance in its analysis of the relative impact of external and internal factors on social development, and mischaracterizes the current state of the financial markets and food security issues.

The international community has long recognized the principle that the primary responsibility for social and economic development rests with national governments. External economic factors such as energy price fluctuations or global economic trends can certainly affect countries’ development, sometimes positively, sometimes negatively. But it matters more whether a national government’s domestic policies respond to the aspirations of ordinary citizens, provide them opportunities, remove obstacles to broad-

based economic growth, and address their needs... Thus, [this resolution] offers the wrong prescription for economic recovery.

* * * *

(2) Right to Development

On December 19, 2011, the UN General Assembly adopted a resolution on the right to development by a vote of 154 in favor, 6 against, with 29 abstaining. U.N. Doc. A/RES/66/155. The United States voted against the resolution for the reasons explained in its explanation of vote, delivered by U.S. Deputy Representative Sammis. The explanation of vote, which is similar in substance to the U.S. explanation of vote on Human Rights Council resolution 18/26 (excerpted above) is available at <http://usun.state.gov/briefing/statements/2011/177950.htm>.

E. INDIGENOUS ISSUES

1. Free, Prior and Informed Consent

On May 12, 2011, U.S. Representative to the International Finance Corporation (“IFC”) Ian Solomon delivered a statement on the IFC’s updated Policy and Performance Standards on Environmental and Social Sustainability. The statement is available at www.treasury.gov/resource-center/international/development-banks/Documents/IFC%20policy%20review%20-%20final%20policy%20May%2012%202011%20-%20US%20position%20to%20post.pdf. Among other topics, Mr. Solomon addressed the concept of “free, prior and informed consent” by indigenous peoples. Mr. Solomon stated:

The United States supports improved participation by and protection of indigenous peoples. With respect to the concept of Free, Prior and Informed Consent (FPIC), as the United States explained at the time it announced its support for the UN Declaration on the Rights of Indigenous Peoples, the United States understands the concept of “free, prior and informed consent” or “FPIC” to call for a process of meaningful consultation with tribal leaders, but not necessarily the agreement of those leaders, before the actions addressed in those consultations are taken. In the context of the Sustainability Policy and Performance Standards, the IFC has proposed a higher threshold for some projects. The United States supports additional protections for indigenous peoples in the context of certain projects with special circumstances. However, the United States does not believe there is an international consensus in favor of a definition of FPIC that requires the agreement of indigenous peoples.

2. U.N. Declaration on the Rights of Indigenous Peoples

On a number of occasions in 2011, the United States reaffirmed its support for the UN Declaration on the Rights of Indigenous Peoples (“Declaration”), first announced by President Obama in December 2010. See *2010 Digest* at 262-84. On June 9, 2011, the U.S. Senate Committee on Indian Affairs held hearings on the Declaration. The State Department’s written testimony included the following explanation on the status of the Declaration:

... the UN Declaration was adopted by a vote of the UN General Assembly in 2007. There will not be another vote on the Declaration. Therefore, countries that have changed their position on the Declaration since 2007 have done so via public announcements of their new positions. President Obama’s announcement on December 16, 2010, and the accompanying Announcement document ... are the official U.S. statement of support for the Declaration. No further steps are required to indicate that the U.S. supports the Declaration.

The State Department’s written testimony is available at www.state.gov/s/l/c8183.htm. Donald Laverdure, Principal Deputy Assistant Secretary for Indian Affairs at the U.S. Department of the Interior testified at the Senate Committee hearing on the U.N. Declaration. His testimony is available at www.indian.senate.gov/hearings/upload/Donald-Laverdure-testimony.pdf.

3. U.S. Statement at the Inter-American Commission on Human Rights

On October 25, 2011, Deputy Assistant Secretary for Indian Affairs at the U.S. Department of the Interior Jodi Gillette, spoke at a hearing at the Inter-American Commission on Human Rights on the topic of violence against Native women in the United States. Deputy Assistant Secretary Gillette’s statement is excerpted below and also available at www.state.gov/s/l/c8183.htm.

* * * *

As the Deputy Assistant Secretary for Indian Affairs at the Department of the Interior, I am pleased to share the implementation strategies we’ve recently put into place, which are designed to protect and safeguard Native women from violent crime. In recognizing the severity of the problem, the Department of the Interior has placed a high priority on combating violence against women in tribal communities. While the United States has far to go in this arena, our Department has embarked upon several efforts to address the issue.

The Department fully supported the Tribal Law and Order Act, which was passed by Congress and signed into law by President Obama on July 29, 2010. In the 15 months since the Act became law, the Department has made significant strides in implementing the Act; most notable are the efforts to address some of the jurisdictional concerns, which have undermined efforts to ensure the safety of Native women in tribal communities. While the Tribal Law and Order Act addressed some of the restrictions facing tribal governments in protecting Native women, we recognize that other barriers must be addressed. In that regard, the Department of the Interior unequivocally echoes the Department of Justice's support of the reauthorization of the Violence Against Women Act and the proposed amendments ...

Our goal is to move towards a comprehensive system designed to eliminate this devastating problem. We have taken important steps to create programs, policies, protocols, and especially trainings which are intended to bring about improved responses to domestic violence. The Bureau of Indian Affairs (BIA) is focusing on the following three areas of trainings ... 1) BIA Law Enforcement; 2) Victim Witness Advocacy Program and 3) Tribal Courts.

* * * *

In the areas of agency collaboration and tribal consultation, pursuant to the Tribal Law and Order Act, the Department of the Interior has entered into a multi-agency agreement to address Alcohol and Substance Abuse and Prevention in Indian Country. ... As each of our initiatives has benefited from meaningful engagement with tribes, we will continue to work with tribes through formal consultations and extensive planning sessions.

In conclusion, the Department is strongly committed to improving safety in Indian Country. We are also morally obligated to address this issue, because for too long, Native women have been disproportionately victimized by domestic violence. We appreciate the Commission's focus on the safety of Native women and take courage with the strong leadership by our President on this issue. ... It is up to all of us to act quickly and decisively because Native women deserve to be safe in their respective communities. Thank you again for the opportunity to address this Commission.

* * * *

F. PROTECTION OF MIGRANTS

On November 15, 2011, the United States joined consensus when the Third Committee adopted a resolution on the protection of migrants. After the Committee adopted the resolution, a U.S. delegation member delivered a statement that explained the U.S. position on the resolution, including U.S. concerns about it. The statement reiterated some of the points the U.S. delegation made during the Committee's consultations on the draft resolution and many of the points the United States had made in previous years concerning the annual resolutions on the protection of migrants. The statement is available at <http://usun.state.gov/briefing/statements/2011/178680.htm>. See *Digest 2008* at 338-39; *Digest 2009* at 242; *Digest 2010* at 284. The General Assembly adopted the resolution without a vote on December 19, 2011. U.N. Doc. A/RES/66/172.

G. CLIMATE CHANGE

For discussion of issues relating to climate change generally, see Chapter 13.A.1.

On March 24, 2011, at its 16th session, the Human Rights Council adopted by consensus a resolution on human rights and the environment. U.N. Doc. A/HRC/RES/16/11. The United States provided an explanation of its position on the resolution, set forth below and available at www.state.gov/s/l/c8183.htm.

* * * *

The United States believes that protection of the environment and its contribution to sustainable development, human well-being, and the enjoyment of human rights are vitally important. In this spirit, we join consensus on this resolution in the expectation that the Office of the High Commissioner for Human Rights will prepare a report that will contribute to our understanding of the facts relating to human rights and the environment. However, we have concerns regarding the general approach of placing environmental concerns in the human rights context. We also have significant concerns regarding the appropriate mandates for UN fora, as well as on specific language in this resolution.

We remain uncomfortable with the proliferation of resolutions and decisions addressing environmental issues across the UN system, particularly in fora such as this Council, which has neither the mandate nor the expertise to address environmental issues. In discussions on international environmental governance and the institutional framework for sustainable development in other fora, such as the UN Environment Program and the preparatory meetings of Rio+20, there is consensus on the need to restrict discussion on environmental issues to fewer UN organizations and multilateral environmental agreements. This resolution counters those efforts and undermines attempts to streamline the UN system and improve its efficiency...

The United States supports the principles of the Rio Declaration on Environment and Development, as agreed in 1992. While this resolution quotes only from Principle 7 of the Rio Declaration, we believe that every paragraph in this declaration is an important, carefully negotiated part of a larger whole. Language taken out of context from the larger text, therefore, may misrepresent the intention of the original declaration and risk undermining the approach of sustainable development, which strives to integrate all aspects of development in a mutually reinforcing way. We note that other provisions of the Rio Declaration—particularly Principles 10, 20, 21, and 22 relating to public participation, access to information and justice, and participation of women, youth, and indigenous people—are of more relevance to the requested report than Principle 7.

The United States understands and accepts that Rio Principle 7 highlights the special leadership role of the developed countries, based on our industrial development, our experience with environmental protection policies and actions, and our wealth, technical expertise and capabilities. The United States does not accept any interpretation of Principle 7 that would imply a recognition or acceptance by the United States of any international obligations or liabilities, or any diminution in the responsibilities of developing countries. Moreover, by joining consensus here, we are not changing our position on Rio Principle 3. As we noted at the Rio Conference, we understand the thrust of this citation to be that economic development goals and objectives

must be pursued in such a way that the development and environmental needs of present and future generations are taken into account.

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On September 30, 2011, at its 18th session, the Human Rights Council adopted by consensus a resolution on human rights and climate change. U.N. Doc. A/HRC/RES/18/22. The United States provided an explanation of its position on the resolution, set forth below and available at www.state.gov/s/l/c8183.htm.

* * * *

The United States recognizes that all over the world people face serious risks because of climate change. No nation can escape the impacts of climate change—the security and stability of all nations and their people are at risk, especially the most vulnerable. As noted in Resolution 10/4, the effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights. And, as emphasized by the Conference of the Parties to United Nations Framework Convention on Climate Change (UNFCCC), countries should, in all climate change related actions, fully respect human rights. We remain firm in our conviction that discussion of climate change in the Human Rights Council must focus on ensuring that responses to climate change respect human rights. On that basis, we are very pleased to join consensus on this resolution.

We would like to note our concern about the resolution’s selective quoting from the UNFCCC, to which the United States is a party. We understand the references to be acknowledgements by the Council that the FCCC contains the stated provisions, rather than endorsements by the Council itself of the content of such provisions. We also view the quotations from that Convention as a subset of relevant UNFCCC provisions, and it goes without saying that the effects of these quotations from the UNFCC and the concepts they describe are limited to the context of that carefully negotiated Convention.

While we acknowledge the desire for a seminar on impacts of climate change on the enjoyment of human rights, we believe the seminar should not serve as an alternate negotiating forum to produce recommendations and specific text for the UNFCCC.

Fundamentally, we see a climate change-related role of this Council related to ensuring that countries respect their human rights obligations when they react to climate change. While, as the resolution reiterates, climate change is a global problem requiring a global solution, such a global solution is an issue for environmental bodies.

We interpret this resolution’s reaffirmation of human rights instruments in the first preambular paragraph as applicable to the extent countries affirmed those instruments in the first place.

Regarding the preambular section’s list of rights for the enjoyment of which climate change related impacts may have implications, we interpret the terms used to name economic, social and cultural rights as shorthand references to the more accurate and widely accepted terms, and we maintain our previously-stated positions on those rights. With respect to the same section, the phrase from the two Covenants should be interpreted in light of their context in the

relevant covenants.

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H. TORTURE AND OTHER CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT

On December 19, 2011, the General Assembly adopted a resolution on torture and other cruel, inhuman or degrading treatment or punishment that included a paragraph proposed by the United States that expressed concern “with all acts which can amount to torture and other cruel, inhuman or degrading treatment or punishment committed against persons exercising their rights of peaceful assembly and freedom of expression in all regions of the world.” U.N. Doc. A/RES/66/150.

I. JUDICIAL PROCEDURE, PENALTIES, AND RELATED ISSUES

1. Death Penalty

On September 28, 2011, the Human Rights Council at its 18th session adopted by consensus a decision requesting ongoing reporting by the Secretary General on the question of the death penalty. U.N. Doc. A/HRC/DEC/18/117. The United States joined consensus on the decision, providing the following explanation:

International law does not prohibit capital punishment when imposed in accordance with a state’s international obligations. We thank the sponsors of this resolution for producing a text that is carefully drafted and consistent with international law and practice. We urge all governments that employ the death penalty to do so in conformity with their international human rights obligations.

U.S. explanation of position, available at <http://geneva.usmission.gov/2011/09/28/us-joins-consensus-on-resolution-on-reporting-by-the-un-secretary-general-on-the-death-penalty/>.

2. Extrajudicial, Summary or Arbitrary Executions

On June 16, 2011, the United States joined consensus on a Human Rights Council resolution on the mandate of the special rapporteur on extrajudicial, summary or arbitrary executions. U.N. Doc. A/HRC/RES/17/5. The United States provided a statement explaining its position on the resolution, excerpted below and available at www.state.gov/s/l/c8183.htm.

* * * *

The United States is pleased to join consensus on this text in condemning extrajudicial, summary or arbitrary executions against all persons, irrespective of their status. We strongly support the renewal of the mandate of the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions, and look forward to continuing dialogue with the mandate holder. We also strongly agree with and appreciate the cosponsors' efforts to retain the reference to General Assembly resolution 65/208, which contains language specifically condemning ESAs targeting vulnerable groups, including members of the LGBT community.

With regard to the legal underpinnings of this resolution, the United States notes that two mutually reinforcing bodies of law regulate unlawful killings of individuals by governments—international human rights law and international humanitarian law. While determining what international law rules apply to any particular government action during an armed conflict is highly fact-specific and made even more difficult by the changing nature of warfare, the applicable rules for the protection of individuals and conduct of hostilities in armed conflict outside a nation's territory are typically found in international humanitarian law. We are concerned that this point is not sufficiently clear in preambular paragraph 3.

Moreover, while we agree that all extrajudicial, summary or arbitrary executions are crimes, we would clarify that whether such executions constitute crimes under the Rome Statute of the International Criminal Court would depend on the circumstances in each case.

In conclusion, we underscore our firm belief that all States have clear international obligations to protect human rights and fundamental freedoms and should take effective action to combat all extrajudicial, summary or arbitrary killings and punish the perpetrators, and that these obligations are inextricably intertwined with the promotion of justice and the rule of law.

* * * *

In October 2011, the United States presented an intervention at the UN General Assembly Third Committee during an interactive dialogue with Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions Christof Heyns. The U.S. intervention addressed criticisms the special rapporteur had made with respect to the operation against Osama bin Laden. The U.S. intervention is available at www.state.gov/s/l/c8183.htm.

* * * *

The United States has consistently and unequivocally condemned extrajudicial, summary, or arbitrary executions against all persons, irrespective of their status. We agree that all States have the obligation to protect human rights and fundamental freedoms and should take effective measures to combat extrajudicial killings and punish the perpetrators.

With respect to his most recent report, we wish to thank the SR for his thorough review of relevant legislation and practices in 101 countries and territories regarding the use of lethal force during law enforcement operations, in particular police actions during arrests. We found his identification and analysis of the five models of how countries deal with this issue informative. We will carefully review the principles and recommendations he has set out for further consideration.

We appreciate the report's focus on domestic police powers and the acknowledgement of the fundamental distinctions between the two bodies of international law that may apply to the

use of force by governments—international human rights law governing the use of lethal force in domestic law enforcement situations, and international humanitarian law governing the use of force in armed conflict. We continue to be concerned that the SR has chosen to comment on operations during armed conflict in a manner that obscures this clear distinction and contributes to confusion about the applicable rules.

We have a number of concerns regarding the SR’s “case study” of the operation against Osama Bin Laden, and strongly reject any suggestion that his killing could be considered unlawful.

The U.S. Attorney General publicly explained earlier this year the legal basis for the operation against bin Laden. In particular, he noted that Bin Laden was the unquestioned leader of an enemy force who continued to plot attacks against the United States and, therefore, under the law of war, he was a legitimate target in our armed conflict with Al-Qaeda, and targeting him was justified as an act of national self-defense.

The manner in which the operation was conducted—taking great pains to distinguish between legitimate military objectives and civilians and to avoid excessive incidental injury to the latter—comported with the law of war principles of distinction and proportionality.

We also strongly disagree with any suggestion that the operation against Bin Laden ruled out the acceptance of surrender. To the contrary, U.S. Forces were prepared to capture Bin Laden, if he surrendered. The laws of war require acceptance of a genuine surrender that is clearly communicated by the surrendering party and received by the opposing force, under circumstances where it is feasible to accept the offer of surrender. Osama Bin Laden did not make such an attempt to surrender, and our forces were authorized to use force against him.

Finally, we fully acknowledge that the use of force against al Qaeda outside of hot battlefields, such as Afghanistan, is an issue on which there is some disagreement. Nevertheless, the United States does not view its authority to use force in such situations as unbounded, but instead subject to rules of international law that must be assessed on a case-by-case basis. ...

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J. PROMOTION OF TRUTH, JUSTICE, REPARATION

On September 29, 2011, the United States joined consensus on a resolution at the Human Rights Council establishing the first-ever special rapporteur “on the promotion of truth, justice, reparation and guarantees of non-recurrence.” U.N. Doc. A/HRC/RES/18/7.

K. RULE OF LAW AND DEMOCRACY PROMOTION

1. Periodic and Genuine Elections

On November 18, 2011, the United States introduced a resolution in the Third Committee of the United Nations General Assembly on “Strengthening the Role of the United Nations in Enhancing Periodic and Genuine Elections and the Promotion of Democratization.” The General Assembly adopted the resolution by consensus on December 19, 2011. U.N. Doc.

A/RES/66/163. The statement of Kelly L. Razzouk, Human Rights Advisor and Third Committee Executive Officer for the U.S. Mission to the UN, appears below and is also available at www.state.gov/s/l/c8183.htm.

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It is my pleasure to bring before the Committee for Action the resolution entitled Strengthening the Role of the United Nations in Enhancing Periodic and Genuine Elections and the Promotion of Democratization, L. 43, Rev. 1.

Mr. Chair, we are very pleased this year to have over 80 cosponsors from across regions. We appreciate the constructive engagement of delegations on the text and the revised version that was tabled incorporates the views of delegations.

This year's text reaffirms that democracy is a universal value based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives.

This year's text also includes new elements recognizing the importance of fair, periodic and genuine elections, including in new democracies and countries undergoing democratization in order to empower citizens to express their will and to promote successful transition to long-term sustainable democracies.

We appreciate the support of delegations for this text and we hope it will again be adopted by consensus as it has been in the past.

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2. Civil Society

a. Strategic Dialogue with Civil Society

On February 16, 2011 Secretary Clinton launched the Strategic Dialogue with Civil Society (the "Dialogue"), a Federal Advisory Committee within the U.S. Department of State. The launch event convened civil society representatives from more than 20 countries, senior officials from the U.S. Government, and leaders of several U.S.-based international NGOs in Washington, D.C. with thousands of civil society representatives participating virtually from U.S. Embassies around the world. Secretary Clinton's remarks at the launch are available at www.state.gov/secretary/rm/2011/02/156681.htm. After its launch, the Dialogue commenced its work through working groups and international sessions. Secretary Clinton's remarks at one session in Vilnius, Lithuania on June 30, 2011 are available at www.state.gov/secretary/rm/2011/06/167442.htm.

b. Human Rights Council

On September 15, 2011, Ambassador Donahoe delivered a statement for the United States during the 18th Session of the Human Rights Council on the critical foundation that civil

society provides for promoting all human rights. Her statement, excerpted below, is available at <http://geneva.usmission.gov/2011/09/15/civil-society-promoting-all-human-rights/>.

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The United States is glad to have to the opportunity to affirm our unwavering commitment to the protection and promotion of human rights.

People around the world continue to demonstrate their desire for democratic government. We are inspired by the strength, courage, and innovation shown by peaceful demonstrators across the Middle East, and we support transitions to genuine democracies that reflect the aspirations of people across the region.

Against the backdrop of dramatic developments from Cairo to Tripoli to Damascus, we would like to emphasize in particular the essential role that civil society plays in the protection and promotion of human rights, and in the transition to genuine, vibrant democracies.

Civil society provides a critical foundation for holding governments accountable, ensuring good governance, and promoting all human rights, including economic, social and cultural rights. Citizens, activists, organizations, congregations, writers, journalists and reporters each play a vital role in encouraging governments to respect human rights. The mandate of this Council acknowledges the importance of these groups in creating and maintaining a healthy, vibrant society. Our commitment to civil society is renewed every time NGOs and national human rights institutions are given a voice in this chamber.

We call upon emerging democracies to recognize and publicly defend the vital role civil society plays in the transition to healthy and vibrant democracies. New governments must recognize this important role through their laws and their actions. To allow civil society to develop and flourish, governments must respect the right to freedom of expression and the right to freedom of peaceful assembly and association. In this light, we especially appreciated the timely and informative panel on the promotion and protection of human rights in the context of peaceful protests earlier this week.

Recent events in the Middle East and North Africa have demonstrated the importance of peaceful assembly, the time-honored right to come together in public to demonstrate demands, as a vital tool for civil society. This Council has acknowledged its importance in the appointment of a Special Rapporteur for Peaceful Assembly and Freedom of Association.

Likewise, civil society members must be able to express themselves in person, in the media, and over the internet. The drafters of the Universal Declaration of Human Rights, our bedrock document, showed great wisdom when they emphasized that freedom of expression applies equally “through any media and regardless of frontiers.”

States using the excuses of security, order, or stability as a justification to unduly restrict these rights do so at their peril. The permissible scope of restrictions under international human rights law is very narrow and should only be used when absolutely necessary. The former governments of Libya, Tunisia, and Egypt used these arguments to justify restricting basic rights and freedoms. But they had to answer to their people in the end. In Syria, we are again seeing what happens when a government tries to silence its people for too long.

Civil society must be able to make its voice heard in government and have a meaningful role in the conduct of public affairs. In many parts of the world we have seen civil society work

effectively to demand transparency, protect the environment, battle corruption, promote charity and relief work, and defend the rights of the poor and disenfranchised elements of societies. We strongly support these efforts. As Secretary Clinton recently stated, “We have to protect civil society...They are the ones going to prison, they are the ones being beaten up, they are the ones on the front lines of democracy.”

We call upon this Council to continue its work with vigor and purpose, paying special attention to the important role that civil society plays in political transition. We have been heartened to see how this Council has responded to repression and widespread human rights violations in the Middle East. We urge the Council to continue to address human rights violations as they occur in other parts of the world. We look forward to working collaboratively to achieve these goals.

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3. Open Government Partnership

On July 12, 2011, the United States hosted the first high-level meeting of the Open Government Partnership (“OGP”) at the U.S. Department of State. In July, stakeholders assembled to prepare for the formal launch of the initiative in September. Secretary Clinton addressed the July meeting in remarks, available at www.state.gov/secretary/rm/2011/07/168049.htm, which included the following statement:

When a government invites its people to participate, when it is open as to how it makes decisions and allocates resources, when it administers justice equally and transparently, and when it takes a firm stance against corruption of all kinds, that government is, in the modern world, far more likely to succeed in designing and implementing effective policies and services. It is also more likely to harness the talents of its own people and to benefit from their ideas and experiences, and it is also more likely to succeed investing its resources where they are most likely to have the best return.

OGP is an initiative led by an International Steering Committee, co-chaired in its first year by the United States and Brazil. OGP comprises government and civil society representatives and aims to secure concrete commitments from governments to promote transparency, increase civic participation, fight corruption, and harness technology to make government open, effective and accountable. More information about OGP is available at www.state.gov/j/ogp/ and www.opengovpartnership.org/.

On September 20, 2011, OGP was formally launched in New York, with opening remarks by President Obama. Daily Comp. Pres. Docs., 2011 DCPD No. 00656. President Obama’s remarks are excerpted below. President Obama announced the Open Government Declaration, endorsed by the eight founding nations of the OGP: Brazil, Indonesia, Mexico, Norway, the Philippines, South Africa, the United Kingdom, and the United States. The Declaration is available at www.opengovpartnership.org/open-government-declaration.

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One year ago, at the UN General Assembly, I stated a simple truth—that the strongest foundation for human progress lies in open economies, open societies, and in open governments. And I challenged our countries to come back this year with specific commitments to promote transparency, to fight corruption, to energize civic engagement, and to leverage new technologies so we can strengthen the foundations of freedom in our own countries.

Today, we're joined by nations and organizations from around the world that are answering this challenge. In this Open Government Partnership, I'm pleased to be joined by leaders from the seven other founding nations of this initiative. I especially want to commend my friend, President Rousseff of Brazil, for her leadership in open government and for joining the United States as the first co-chairs of this effort.

We're joined by nearly 40 other nations who've also embraced this challenge, with the goal of joining this partnership next year. And we're joined by civil society organizations from around the world—groups that not only help hold governments accountable, but who partnered with us and who offer new ideas and help us to make better decisions. Put simply, our countries are stronger when we engage citizens beyond the halls of government. So I welcome our civil society representatives—not as spectators, but as equal partners in this initiative.

This, I believe, is how progress will be achieved in the 21st century—meeting global challenges through global cooperation, across all levels of society. And this is exactly the kind of partnership that we need now, as emerging democracies from Latin America to Africa to Asia are all showing how innovations in open government can help make countries more prosperous and more just; as new generations across the Middle East and North Africa assert the old truth that government exists for the benefit of their people; and as young people everywhere, from teeming cities to remote villages, are logging on, and texting, and tweeting and demanding government that is just as fast, just as smart, just as accountable.

This is the moment that we must meet. These are the expectations that we must fulfill. And now we see governments around the world meeting this challenge, including many represented here today. Countries from Mexico to Turkey to Liberia have passed laws guaranteeing citizens the right to information. From Chile to Kenya to the Philippines, civil society groups are giving citizens new tools to report corruption. From Tanzania to Indonesia—and as I saw firsthand during my visit to India—rural villages are organizing and making their voices heard, and getting the public services that they need. Governments from Brazil to South Africa are putting more information online, helping people hold public officials accountable for how they spend taxpayer dollars.

Here in the United States, we've worked to make government more open and responsive than ever before. We've been promoting greater disclosure of government information, empowering citizens with new ways to participate in their democracy. We are releasing more data in usable forms on health and safety and the environment, because information is power, and helping people make informed decisions and entrepreneurs turn data into new products, they create new jobs. We're also soliciting the best ideas from our people in how to make government work better. And around the world, we're standing up for freedom to access information, including a free and open Internet.

Today, the eight founding nations of our partnership are going even further—agreeing to an Open Government Declaration rooted in several core principles. We pledge to be more transparent at every level—because more information on government activity should be open, timely, and freely available to the people. We pledge to engage more of our citizens in decision-making—because it makes government more effective and responsive. We pledge to implement the highest standards of integrity—because those in power must serve the people, not themselves. And we pledge to increase access to technology—because in this digital century, access to information is a right that is universal.

Next, to put these principles into practice, every country that seeks to join this partnership will work with civil society groups to develop an action plan of specific commitments. Today, the United States is releasing our plan, which we are posting on the White House website and at OpenGovPartnership.org.

Among our commitments, we’re launching a new online tool—called “We the People”—to allow Americans to directly petition the White House, and we’ll share that technology so any government in the world can enable its citizens to do the same. We’ve develop new tools—called “smart disclosures”—so that the data we make public can help people make health care choices, help small businesses innovate, and help scientists achieve new breakthroughs.

We’ll work to reform and expand protections for whistleblowers who expose government waste, fraud and abuse. And we’re continuing our leadership of the global effort against corruption, by building on legislation that now requires oil, gas, and mining companies to disclose the payments that foreign governments demand of them.

Today, I can announce that the United States will join the global initiative in which these industries, governments and civil society, all work together for greater transparency so that taxpayers receive every dollar they’re due from the extraction of natural resources.

So these are just some of the steps that we’re taking. And today is just the beginning of a partnership that will only grow—as Secretary Clinton leads our effort on behalf of the United States, as these nearly 40 nations develop their own commitments, as we share and learn from each other and build the next generation of tools to empower our citizens and serve them better.

So that’s the purpose of open government. And I believe that’s the essence of democracy. That’s the commitment to which we’re committing ourselves here today. And I thank all of you for joining us as we meet this challenge together.

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L. FREEDOM OF EXPRESSION

1. General

In March 2011, the United States co-sponsored a procedural resolution in the Human Rights Council extending the mandate of the special rapporteur on the promotion and protection of the right to freedom of opinion and expression. The resolution was adopted by consensus on March 24, 2011. U.N. Doc. A/HRC/RES/16/4.

On July 5, 2011, the United States provided observations on the Human Rights Committee’s Draft General Comment 34 on Article 19 of the International Covenant on Civil and Political Rights. General Comment 34 was adopted in 2011. The United States

Observations on the Draft are excerpted below.

* * * *

1. The United States Government appreciates the opportunity to respond to Draft General Comment 34 regarding Article 19 of the International Covenant on Civil and Political Rights.¹ The United States takes extremely seriously its obligations under the Covenant and under other human rights treaties to which it is Party, including its obligations related to Article 19. Given the importance the United States places on the freedom of opinion and expression, it has a strong interest in the Committee's Draft General Comment. Much of the Committee's guidance is useful in terms of its views and recommendations on how to best implement Article 19, but the United States would like to focus its observations on a few key areas of the Draft General Comment that either would benefit from improvement or that the United States considers to be problematic. These include: the application of Article 19(3), the relationship between Articles 19 and 20, blasphemy laws, access to information, as well as observations on a few other paragraphs.

2. The United States strongly agrees as the Committee stated in paragraph 2 of its draft General Comment that "[f]reedom of opinion and freedom of expression are indispensable conditions for the full development of the person" and that they "constitute the foundation stone for every free and democratic society." The United States maintains robust protections for freedom of expression, as provided for in the U.S. Constitution and the laws of the United States. The United States government does not punish or penalize those who peacefully express their views in the public sphere, even when those views are critical of the government. Indeed, dissent is a valuable and valued part of our politics: democracy provides a marketplace for ideas, and in order to function as such, new ideas must be permitted, even if they are unpopular or potentially offensive. The United States also has a free, thriving, and diverse independent press—a feature that existed before the advent of electronic and digital media and that continues today.

I. Application of Article 19(3)

3. The United States agrees with the Committee that the right is the norm and the restriction is the exception. The United States also agrees that any restrictions on freedom of expression must meet a strict test of justification. In fact, in ratifying the Covenant, the United States issued a declaration stating that it is the view of the United States that "States Party to the Covenant should wherever possible refrain from imposing any restrictions or limitations on the exercise of the rights recognized and protected by the Covenant. For the United States, article 5, paragraph 2, which provides that fundamental human rights existing in any State Party, may not be diminished on the pretext that the Covenant recognizes them to a lesser extent, has particular relevance to article 19, paragraph 3, which would permit certain restrictions on the freedom of expression. The United States declares that it will continue to adhere to the requirements and constraints of its Constitution in respect to all such restrictions and limitations." In U.S. constitutional practice, restrictions on expression are subjected to a strict scrutiny test and

¹ *Draft General Comment No. 34: Article 19*, Human Rights Committee, hundredth session, Geneva, Oct. 11-29, 2010. Available at:

<http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

content restriction must be shown to be narrowly tailored to meet a compelling governmental interest.

4. In general, the United States believes the draft's section on "The Application of Article 19(3)" should be streamlined to make clear the threshold premise that any restrictions on expression must comply with the requirements of Article 19(3), namely, that such restrictions are only such as are provided "by law" and "necessary." The United States is of the view that such restrictions on expression must be prescribed by laws that are accessible, clear, and subject to judicial scrutiny; are necessary (e.g., the measures must be the least restrictive means for protecting the governmental interest and are compatible with democratic principles); and should be narrowly tailored to fulfill a legitimate government purpose, such as the protection of national security (e.g., countering dissemination of weapons-making instructions for terrorist purposes), public order, public health and morals (e.g., countering child pornography), and the rights and reputations of others (e.g., countering copyright infringement and libel). Given that the two limitative areas (for respect of the rights or reputations of others, and for protection of national security or of public order, or of public health or morals) are often used as pretext for unduly broad restrictions on expression, it is imperative that the Committee emphasize the importance that any restrictions on expression be necessary and in law.

5. Specifically, the United States believes that the Committee should make clear in paragraph 22 that any restrictions on freedom of expression must comply with Article 19(3) rather than saying that restrictions should not put the right in jeopardy, which could be misinterpreted to allow restrictions on expression that go beyond the exceptions allowed in Article 19(3). Similarly, the United States believes that the Committee's suggestion in paragraph 23 of "public safety"—offered as an example of grounds for permissible restrictions on other rights under the Covenant, that is not applicable under article 19(3)—risks confusion and should be deleted, given the great potential for overlap between public safety and public order.

6. In paragraph 24 of the Draft General Comment the Committee states "[a]ll allegations of attacks on or other forms of intimidation or harassment of journalists, human rights defenders and others should be vigorously investigated, the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress." The United States believes the latter clause should be clarified to state those whose rights under Article 19 are violated should have access to effective remedies, as is stated in the source cited by the Committee in this paragraph.

7. In paragraph 25 of the Draft General Comment, the Committee discusses Article 19(3)'s requirement that any restriction on freedom of expression must be provided for by law. The United States presumes "law" includes both laws passed by democratically-elected legislatures and independent judicial decisions and therefore we see no need to include "and, where appropriate, case law."

8. While the United States agrees that treason laws and provisions related to national security that impact freedom of expression should be carefully drafted, paragraph 31, as currently drafted, is overbroad and is not reflective of Article 19(3). The paragraph states "[i]t is not compatible with paragraph 3, for instance, to invoke treason laws to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated information of legitimate public interest." There may be the rare situation where such persons share information that is considered to be in the legitimate public interest that is also contrary to national security and thereby may be restricted pursuant to Article 19(3). Similarly, while we do not object to the general thrust of the Committee's broad assertion that it is not "generally

appropriate to include in the remit of a state secrets law such categories of information as those relating to the commercial sector, banking and scientific progress,” there may be instances where scientific or technological information is also related to national security and therefore could be restricted under Article 19(3), so long as all of the requirements of Article 19(3), as discussed above, are met.

9. In paragraphs 29 through 33 of the draft General Comment, the Committee proceeds to elaborate the grounds for permissible restrictions on expression without first identifying, as it does later in paragraph 34, that “[r]estrictions must be ‘necessary’ for a legitimate purpose.” However, the Committee should first make clear, consistent with its description in paragraph 23, that the only legitimate purposes are those in Article 19(3), subparagraphs a and b. Further the Committee should also clarify that for a restriction to be “necessary,” it must be the least restrictive means for protecting one of the legitimate purposes described in 19(3), it cannot be overly broad, and must be narrowly tailored to prohibit the least amount of expression possible.

10. The Committee’s discussion, in paragraph 35 of the draft General Comment on the principle of proportionality, also appears disconnected to the discussion in paragraph 23. General Comment 27, to which the Committee cites in paragraph 35, concerns an article of the Covenant unrelated to Article 19, the topic of this draft General Comment. The principle of proportionality, as discussed in paragraph 35, appears to depart from the strict test of justification as discussed in paragraph 23 and as is required for any permissible limitation of the freedom of expression under Article 19(3). The United States respectfully recommends that the Committee revise this section for greater clarity, precision reflective of the language in Article 19(3) and the principles discussed in paragraph 4 of these Observations.

II. The Relationship Between Articles 19 and 20

11. The United States has a reservation to Article 20 given its potential to be interpreted and applied in an overbroad manner. The United States respectfully submits that the Committee’s discussion of “the relationship of articles 19 and 20” could be clarified in a few respects. For example, the draft states that “[t]he acts that are addressed in article 20 are of such an extreme nature that they would all be subject to restriction pursuant to article 19 paragraph 3.” It then proceeds immediately to propose that “a limitation that is justified on the basis of article 20 must also comply with article 19, paragraph 3, which lays down requirements for determining *whether* restrictions on expression are permissible” (emphasis added). The United States urges the Committee to redraft that section to emphasize that any prohibition on expression thought to fall under Article 20 also needs to meet the requirements for restrictions on expression under Article 19(3). Therefore such restrictions on expression must be in law and must be necessary to meet the objectives specified either in 19(3)(a) or 19(3)(b). (See discussion of these requirements in paragraph 4 above).

12. Given the strict requirements that restrictions on expression must meet under Article 19(3), the United States believes, contrary to the implication of the draft comment, that it will rarely be the case that expression can be prohibited under Article 20. To be prohibited under Article 20, expression must first constitute advocacy of religious, national or racial hatred that constitutes incitement to discrimination, hostility or violence, and its prohibition must be provided by law, and *necessary* to respect the rights or reputations of others or to protect public order or national security. To be *necessary*, a restriction on expression, including a prohibition, must be the least restrictive means for protecting the governmental interest, must restrict the least amount of speech possible, and must be compatible with democratic principles. Consequently, the United States believes that only a narrow amount of expression could ultimately be

prohibited under Article 20. Indeed, to protect public order or national security, it is not *necessary* to prohibit all advocacy of racial, religious or national hatred. There are other less restrictive (and more effective) means of protecting public order in the face of this type of expression. For example, a combination of efforts can protect public order in the face of hateful expression: ensuring robust protections for freedom of expression of all individuals allows everyone to have a voice and to counter any offensive speech, encouraging government leaders to speak out against such speech, promoting initiatives to create environments of mutual respect and understanding, reaching out to affected communities, providing conflict-resolution services, and rigorously enforcing anti-discrimination and violent hate crimes laws to contribute to a climate of respect. The efficacy of these types of actions in maintaining public order in the face of hostile expression negates any premise that a prohibition on advocacy of hatred, even when some may consider it amounting to incitement to hostility, discrimination or violence, is *necessary* for public order or national security. In fact, there are instances in which such prohibitions can actually contribute to discrimination, hostility or violence.

13. This is not to say it is never necessary to prohibit any hateful expression—there are some types of advocacy of national, religious, or racial hatred, namely incitement to *imminent* violence, or to imminent hostile acts such as when genuine, intentional threats of violence or intimidation are made to an individual, whereby prohibition is a legitimate government response to protect public order given the potential immediacy of the harm that may be caused by the speech. Given the difficulties in countering or preventing violence resulting from incitement to imminent violence or to hostile acts due to its immediacy, it is an appropriate governmental response to prohibit such expression to maintain public order without risking the underlying human right.

14. Paragraph 53 of the draft General Comment could be made stronger by stating explicitly that the requirements of Article 19(3) (see paragraph 11 above) apply to prohibitions under Article 20.

III. Blasphemy Laws

15. The United States agrees with the Committee in paragraph 50 of the draft that as a legal matter “[b]lasphemy prohibitions and other prohibitions of display of disrespect to a religion or other belief system may not be applied in a manner that is incompatible with the paragraph 3 or other provisions of the Covenant...” However, as a practical matter, experience has shown that it is nearly impossible to have blasphemy prohibitions that do not unduly restrict freedoms of religion or expression and that are not applied in a discriminatory manner. Such laws generally do not meet the test provided for in Article 19(3) because they are not necessary to protect the rights or reputation of others, and are likely unnecessary for maintaining public order, as they seek only to protect particular viewpoints. Further, it is contrary to the freedom of expression and democratic values to provide what is essentially a “heckler’s veto,” that is, to allow an individual who finds something insulting to have the ability to restrict another’s freedom of expression. Restrictions on expression are not permissible under Article 19(3) simply because one person or group finds a particular expression to be offensive. Indeed, the United States would also disagree with the apparent suggestion in the draft that provisions on blasphemy, or on disrespect for religion or other belief systems need not be repealed “other than in the specific context of compliance with article 20.”

16. In fact, blasphemy laws are often used to deter and/or punish dissent or criticism of religious or political leaders. Indeed, such provisions are often used against members of religious minorities or dissident members of majority religious groups. As such, they can

undermine the human rights of those expressing minority or dissenting views, for example, by restricting their freedom of expression or their ability to practice their religion if it is not in line with the majority view. The United States believes it is unlikely that blasphemy prohibitions can be applied in a manner that is compatible with the rights enshrined in the Covenant, and recommends that the Committee clarify and underscore the imperative—in this context—of the promotion and protection of the fundamental freedoms of expression and religion, and the application of article 5 of the Covenant. This is particularly the case when such laws are applied to criticisms of institutions, opinions, or other subjective topics that are not subject to verification.

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2. Internet Freedom

On February 15, 2011, Secretary Clinton delivered a speech on internet freedom, following up on a speech she delivered on the subject in 2010. See *Digest 2010* at 303-5. In her February 2011 speech, available at www.state.gov/secretary/rm/2011/02/156619.htm, Secretary Clinton reaffirmed the U.S. commitment to supporting internet freedom as a platform for exercising the universal freedoms of expression, assembly, and association. She said:

The internet has become the public space of the 21st century—the world’s town square, classroom, marketplace, coffeehouse, and nightclub. ... To maintain an internet that delivers the greatest possible benefits to the world, we need to have a serious conversation about the principles that will guide us, what rules exist and should not exist and why, what behaviors should be encouraged or discouraged and how.

She proceeded to discuss several major challenges of ensuring a free and open internet: first, achieving both liberty and security; second, protecting both transparency and confidentiality; and third, protecting free expression while fostering tolerance and civility. Secretary Clinton also reviewed U.S. initiatives to promote internet freedom and counter internet repression.

On June 3, 2011, Anna Mansfield, U.S. Deputy Legal Adviser, delivered a statement on behalf of the U.S. delegation to the 17th Session of the Human Rights Council regarding the recent report of the special rapporteur on freedom of expression, which focused on internet freedom. Ms. Mansfield’s statement, excerpted below, is available at <http://geneva.usmission.gov/2011/06/03/u-s-statement-internet-access-and-violence-against-women/>.

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The United States thanks Special Rapporteur La Rue for his report. We strongly support his affirmation of the freedom of opinion and expression as underpinning and protecting other human rights. We appreciate his timely focus on access to electronic communications and

freedom of expression on the Internet. The dramatic events unfolding in North Africa, the Middle East and beyond highlight the importance of new communications tools for providing new avenues to exercise the freedom of expression, and allowing people everywhere to articulate their democratic aspirations.

As the report correctly states, Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights were drafted with foresight to include technological developments through which individuals can exercise their right to freedom of expression. This includes the freedom “to seek, receive and impart information and ideas through any media and regardless of frontiers,” providing the same strong protections for online speech as they do for offline speech.

We agree that “the right to freedom of expression includes expression of views and opinions that offend, shock or disturb,” and that legitimate restrictions on expression allowed under international human rights law are “few, exceptional and limited.” The United States does not believe that there should be limitations on hate speech generally, unless it constitutes incitement to imminent violence. We therefore support the concept that “there should be as little restriction as possible to the flow of information via the Internet.”

We strongly condemn the brutal methods used by some governments to silence dissent, and we are concerned by the report that in 2010, 109 bloggers were in prison on charges related to the content of their expression. We urge Member States to remove domestic legal provisions that improperly criminalize or otherwise improperly limit the freedom of expression.

States must ensure that Internet access is available, even during times of political unrest. It is unacceptable for a government to suspend user accounts on social networking sites, or to cut off access entirely, for engaging in non-violent political speech. The United States encourages the Special Rapporteur to further examine the role of states in disabling national or regional Internet access for political reasons.

We are also concerned with the Special Rapporteur’s report of increasing denial of service attacks on civil society. We urge Member States to adopt measures to prevent such acts, and to hold those responsible to account.

The United States suggests that the Special Rapporteur expand his inquiry on the influence of governments over communications companies. We would be interested in a study of whether governments are improperly requiring corporations to censor content and to participate in surveillance and monitoring of citizens, as a condition for operating a business in the country.

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On June 10, 2011, the United States joined 39 other countries in a joint statement introduced by Sweden at the Human Rights Council on freedom of expression on the internet. The joint statement, available at www.sweden.gov.se/sb/d/14194/a/170566, included the following:

The Internet should not be used as a platform for activities prohibited in human rights law. However, we believe, as does the Special Rapporteur, that there should be as little restriction as possible to the flow of information on the Internet. Only in a few exceptional and limited circumstances can restrictions on content be acceptable. Such restrictions must comply with international human rights law, notably article 19 of the ICCPR. We consider Government-initiated closing down of the Internet, or major parts

thereof, for purposes of suppressing free speech, to be in violation of freedom of expression. In addition, Governments should not mandate a more restrictive standard for intermediaries than is the case with traditional media regarding freedom of expression or hold intermediaries liable for content that they transmit or disseminate.

At the 18th session of the Human Rights Council in September 2011, the United States joined consensus on a decision to hold a panel discussion during the March 2012 session on the subject of freedom of expression on the internet. U.N. Doc A/HRC/DEC/18/119.

Secretary Clinton addressed a conference on internet freedom at The Hague hosted by the Netherlands in December 2011. Her remarks, excerpted below, are available at www.humanrights.gov/2011/12/09/secretary-clinton-on-internet-freedom-transcript/. Secretary Clinton suggested the need for technology companies to practice good self-governance, rejected the call for a single global code of internet governance, and encouraged efforts to increase on-line access for people around the world. For additional statements and information on internet freedom, see the State Department's webpage on internet freedom, www.state.gov/e/eb/cip/netfreedom/index.htm.

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...[T]oday, as people increasingly turn to the internet to conduct important aspects of their lives, we have to make sure that human rights are as respected online as offline. After all, the right to express one's views, practice one's faith, peacefully assemble with others to pursue political or social change—these are all rights to which all human beings are entitled, whether they choose to exercise them in a city square or an internet chat room. And just as we have worked together since the last century to secure these rights in the material world, we must work together in this century to secure them in cyberspace.

This is an urgent task. It is most urgent, of course, for those around the world whose words are now censored, who are imprisoned because of what they or others have written online, who are blocked from accessing entire categories of internet content, or who are being tracked by governments seeking to keep them from connecting with one another.

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...[I]ncidents worldwide remind us of the stakes in this struggle. And the struggle does not belong only to those on the front lines and who are suffering. It belongs to all of us: first, because we all have a responsibility to support human rights and fundamental freedoms everywhere. Second, because the benefits of the network grow as the number of users grow. The internet is not exhaustible or competitive. My use of the internet doesn't diminish yours. On the contrary, the more people that are online and contributing ideas, the more valuable the entire network becomes to all the other users. In this way, all users, through the billions of individual choices we make about what information to seek or share, fuel innovation, enliven public debates, quench a thirst for knowledge, and connect people in ways that distance and cost made impossible just a generation ago.

But when ideas are blocked, information deleted, conversations stifled, and people constrained in their choices, the internet is diminished for all of us. What we do today to preserve fundamental freedoms online will have a profound effect on the next generation of users. More than two billion people are now connected to the internet, but in the next 20 years, that number will more than double. And we are quickly approaching the day when more than a billion people are using the internet in repressive countries. The pledges we make and the actions we take today can help us determine whether that number grows or shrinks, or whether the meaning of being on the internet is totally distorted.

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... I'd like to briefly discuss three specific challenges that defenders of the internet must confront.

The first challenge is for the private sector to embrace its role in protecting internet freedom. Because whether you like it or not, the choices that private companies make have an impact on how information flows or doesn't flow on the internet and mobile networks. They also have an impact on what governments can and can't do, and they have an impact on people on the ground.

In recent months, we've seen cases where companies, products, and services were used as tools of oppression. Now, in some instances, this cannot be foreseen, but in others, yes, it can. A few years ago, the headlines were about companies turning over sensitive information about political dissidents. Earlier this year, they were about a company shutting down the social networking accounts of activists in the midst of a political debate. Today's news stories are about companies selling the hardware and software of repression to authoritarian governments. When companies sell surveillance equipment to the security agency of Syria or Iran or, in past times, Qadhafi, there can be no doubt it will be used to violate rights.

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... A range of resources emerged in recent years to help companies work through these issues. The UN Guiding Principles on Business and Human Rights, which were adopted in June, and the OECD Guidelines for Multinational Enterprises both advise companies on how to meet responsibilities and carry out due diligence. And the Global Network Initiative, which is represented here tonight, is a growing forum where companies can work through challenges with other industry partners, as well as academics, investors, and activists.

And of course, companies can always learn from users. The Silicon Valley Human Rights Conference in October brought together companies, activists, and experts to discuss real life problems and identify solutions. And some participants issued what they called the Silicon Valley Standard for stakeholders to aspire to.

Working through these difficult questions by corporate executives and board members should help shape your practices. Part of the job of responsible corporate management in the 21st century is doing human rights due diligence on new markets, instituting internal review procedures, identifying principles by which decisions are to be made in tough situations, because we cannot let the short-term gains that all of us think are legitimate and worth seeking jeopardize the openness of the internet and human rights of individuals who use it without it coming back to haunt us all in the future. Because a free and open internet is important not just to technology

companies but to all companies. Whether it's run with a single mobile phone or an extensive corporate network, it's hard to find any business today that doesn't depend in some way on the internet and doesn't suffer when networks are constrained.

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But even as companies must step up, governments must resist the urge to clamp down, and that is the second challenge we face. If we're not careful, governments could upend the current internet governance framework in a quest to increase their own control. Some governments use internet governance issues as a cover for pushing an agenda that would justify restricting human rights online. We must be wary of such agendas and united in our shared conviction that human rights apply online.

So right now, in various international forums, some countries are working to change how the internet is governed. They want to replace the current multi-stakeholder approach, which includes governments, the private sector, and citizens, and supports the free flow of information, in a single global network. In its place, they aim to impose a system cemented in a global code that expands control over internet resources, institutions, and content, and centralizes that control in the hands of governments.

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In effect, the governments pushing this agenda want to create national barriers in cyberspace. This approach would be disastrous for internet freedom. More government control will further constrict what people in repressive environments can do online. It would also be disastrous for the internet as a whole, because it would reduce the dynamism of the internet for everyone. Fragmenting the global internet by erecting barriers around national internets would change the landscape of cyberspace. In this scenario, the internet would contain people in a series of digital bubbles, rather than connecting them in a global network. Breaking the internet into pieces would give you echo chambers rather than an innovative global marketplace of ideas.

The United States wants the internet to remain a space where economic, political, and social exchanges flourish. To do that, we need to protect people who exercise their rights online, and we also need to protect the internet itself from plans that would undermine its fundamental characteristics.

Now, those who push these plans often do so in the name of security. And let me be clear: The challenge of maintaining security and of combating cyber crime, such as the theft of intellectual property, are real—a point I underscore whenever I discuss these issues. There are predators, terrorists, traffickers on the internet, malign actors plotting cyber attacks, and they all need to be stopped. We can do that by working together without compromising the global network, its dynamism, or our principles.

...[T]he United States supports the public-private collaboration that now exists to manage the technical evolution of the internet in real time. We support the principles of multi-stakeholder internet governance developed by more than 30 nations in the OECD earlier this year. A multistakeholder system brings together the best of governments, the private sector, and civil society, and most importantly, it works. It has kept the internet up and running for years all over the world. So to use an American phrase, our position is, "If it ain't broke, don't fix it." And there's no good reason to replace an effective system with an oppressive one.

The third and final challenge is that all of us—governments, private sector, civil society—must do more to build a truly global coalition to preserve an open internet, and that's

where all of you here today come in. Because internet freedom cannot be defended by one country or one region alone. Building this global coalition is hard, partly because, for people in many countries, the potential of the internet is still unrealized. While it's easy for us in the United States or in the Netherlands to imagine what we would lose if the internet became less free, it is harder for those who have yet to see the benefits of the internet in their day-to-day lives. So we have to work harder to make the case that an open internet is and will be in everyone's best interests. And we have to keep that in mind as we work to build this global coalition and make the case to leaders of those countries where the next generation of internet users live. These leaders have an opportunity today to help ensure that the full benefits are available to their people tomorrow, and in so doing, they will help us ensure an open internet for everyone.

So the United States will be making the case for an open internet in our work worldwide, and we welcome other countries to join us. ...[L]et's lay the groundwork now for these partnerships that will support an open internet in the future. And in that spirit I want to call attention to two important items on your agenda for tomorrow.

The first will be to build support for a new cross-regional group that will work together in exactly the way that I've just discussed—based on shared principles, providing a platform for governments to engage creatively and energetically with the private sector, civil society, and other governments. Several countries have already signaled their intention to join, I hope others here will do the same, and going forward, others will endorse the declaration that our Dutch hosts have prepared. It's excellent work, Uri, and we thank you for your leadership.

The second item I want to highlight is a practical effort to do more to support cyber activists and bloggers who are threatened by their repressive governments. The Committee to Protect Journalists recently reported that of all the writers, editors, and photojournalists now imprisoned around the world, nearly half are online journalists. The threat is very real. Now several of us already provide support, including financial support, to activists and bloggers, and I was pleased that the EU recently announced new funding for that purpose. And I know that other governments, including the Netherlands, are also looking for ways to help out.

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Our government will continue to work very hard to get around every barrier that repressive governments put up. Because governments that have erected barriers will eventually find themselves boxed in, and they will face a dictator's dilemma. They will have to choose between letting the walls fall or paying the price for keeping them standing by resorting to greater oppression, and to escalating the opportunity cost of missing out on the ideas that have been blocked \ and the people who have been disappeared.

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3. Religion

a. Freedom of religion

(1) Designations under the International Religious Freedom Act

On August 18, 2011, the Secretary Clinton redesignated Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan, and Uzbekistan, respectively, as a “country of particular concern” under § 402(b) of the International Religious Freedom Act of 1998 (Pub. L. No. 105–292), as amended. The eight states were so designated “for having engaged in or tolerated particularly severe violations of religious freedom.” 77 Fed. Reg. 20,687 (March 30, 2012). The presidential actions designated for each of those countries by the secretary are listed in the Federal Register notice.

(2) Annual Report on International Religious Freedom

On September 13, 2011, the Department of State released a Report on International Religious Freedom, covering the period July 1, 2010 through December 31, 2010, and transmitted the report to Congress pursuant to § 102(b) of the International Religious Freedom Act of 1998 (Pub. L. No. 105–292), as amended, 22 U.S.C. § 6412(b). The report is available at www.state.gov/g/drl/rls/irf/2010_5/index.htm. The report covers six months, rather than an entire year as in past reports, because the Department shifted to a calendar year reporting period. Remarks by Assistant Secretary for the Bureau of Democracy, Human Rights, and Labor Michael H. Posner and Ambassador-at-Large for International Religious Freedom Suzan Johnson Cook, on the release of the report are available at www.state.gov/g/drl/rls/rm/2011/172274.htm. Secretary Clinton’s statement on the release of the report is available at www.state.gov/secretary/rm/2011/09/172254.htm.

b. Combating discrimination based on religion

(1) Human Rights Council resolution

On March 24, 2011, the Human Rights Council adopted by consensus a landmark resolution on “Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief.” U.N. Doc. S/RES/HRC/RES/16/18. Unlike past resolutions on so-called “defamation of religion,” this resolution sought to combat religious intolerance through action-oriented approaches that do not limit the freedom of expression or infringe on the freedom of religion. Secretary Clinton welcomed adoption of the resolution in a statement issued March 24 and available at <http://geneva.usmission.gov/2011/03/24/adoption-of-resolution-at-human-rights-council-combating-discrimination-and-violence/>. Ambassador Rice also issued a statement welcoming the resolution on March 24, which is available at

<http://usun.state.gov/briefing/statements/2011/159144.htm>. Set forth below is the United States' explanation of position on the resolution.

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The United States is pleased to join consensus on this resolution. We congratulate the sponsors of this resolution for what we hope can become a blueprint for constructive, meaningful actions that the international community will take to promote respect for religious differences. We have for some years shared the stated concerns of the sponsors and others about intolerance, discrimination and violence directed against persons on the basis of their religion or belief. It is deeply concerning that these problems persist in the 21st century in all regions of the world. As Secretary Clinton indicated here three weeks ago, it is time for the Council to step up efforts to combat these problems so as to make tangible improvements in people's lives. This resolution establishes the way forward.

The United States had been unable to support previous efforts of the sponsors to address these very real and serious problems not because we disagreed with the stated goals but because those efforts in our view paid insufficient attention to the individual-centered focus of international human rights law and relied in great measure on seeking to impose legal restrictions on expression as a means to combat intolerance, discrimination and violence based on religion or belief. Not only do we believe such restrictions are wrong and violate universal freedoms of expression and religion; we also are convinced that they are counterproductive and exacerbate the very problems they ostensibly seek to address. We have seen in various parts of the world how governments have misused laws that criminalize offensive expression to persecute political opponents and minorities. In some cases those engaged in religiously motivated violence or murder have pointed to such laws as justification for their actions.

The resolution being adopted today allows for criminalization of expression in only one circumstance—incitement to imminent violence. It calls upon states to take different types of measures to counter all other forms of offensive expression, ranging from education and awareness building to interfaith efforts to urging political, religious and societal leaders to speak out and condemn offensive expression. The resolution specifically recognizes that the most effective antidote to offensive expression is more expression and the “open public debate of ideas,” not laws that restrict expression in the name of tolerance. The approach taken by this resolution is one that upholds international human rights standards.

The resolution also sets forth a specific menu of proven measures to prohibit discrimination and invidious profiling, and calls upon states to enforce those prohibitions effectively. The resolution also calls on states to implement laws to prohibit hate crimes against persons, which are violent crimes such as assault, property destruction, or even murder, motivated by, among other things, bias based on religion or belief. And it expressly recognizes the importance of providing all adherents of religions or beliefs equal protection of the law.

Mr. Chairman, each of us has a lot of work to do to turn the actions recommended in this resolution into reality. To succeed, the approach outlined here must be more than words on paper in a UN resolution. It must be a call to action for each of our governments to take the assertive, concrete measures specified in the resolution. The United States urges member states to heed the call in the resolution to provide updates on the efforts they are making in this regard

as part of ongoing reporting to OHCHR. For our part, we will continue to advocate for robust implementation at home and in all parts of the world and will be working to develop follow on activities to further that goal.

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Human Rights Council Resolution 16/18 called for the next session of the Human Rights Council (the 17th Session) to convene a panel on combating intolerance and discrimination based on religion or belief. Ambassador Cook spoke at that panel on June 14, 2011. Ambassador Cook's remarks are excerpted below and available in full at <http://geneva.usmission.gov/2011/06/14/political-leaders-have-obligation-to-counter-religious-intolerance/>.

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States have tools at their disposal to combat religious intolerance; in many cases what is needed is the political will to use them. Governments need to develop robust legal protections to address acts of discrimination against individuals and bias-inspired violent crimes. Each country should determine if it has laws on the books that allow it to prosecute individuals who discriminate on the basis of religion in hiring, access to public accommodation and other aspects of public life, or who commit violence on that basis. Each country should determine if it has a capable and dedicated band of investigators and prosecutors to enforce such laws. Even more importantly, leaders in government, politics, religion, business and the rest of society must stand ready to condemn hateful ideology; and to vigorously defend the rights of individuals to practice their religion freely and exercise their freedom of expression. Leaders who remain silent are contributing to the problem and should be held politically accountable. Let me give some examples drawn from practice in the United States.

Combating Discrimination through robust legal protections:

The U.S. Department of Justice is the primary institution responsible for enforcing federal statutes that prohibit discrimination or acts of violence and intimidation on the basis of race, national origin, and religion. Bias-inspired violent crimes are prosecuted to the fullest extent of federal law for especially severe punishment. Each state in the United States has similar legal protections and entities responsible for enforcing them.

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Condemn Hateful Ideology and Outreach to Affected Groups:

Legal safeguards are essential, but it is better to create a climate that seeks to prevent discrimination and violence before it happens, than to punish after the fact. This requires the commitment and courage of political and societal leaders. ...

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The Civil Rights Division of the Justice Department engages in extensive outreach to address September 11th backlash-related civil rights issues, by providing speakers at national and regional conventions and other community events, and hosting a bi-monthly meeting that brings together community leaders with officials from a variety of federal agencies to comprehensively address civil rights issues.

The United States Department of Homeland Security also works to improve the cultural competency of its personnel and leads training for Federal, State, and local law enforcement on effective policing without ethnic or racial profiling; best practices related to community engagement; and misconceptions and stereotypes of Islam and Muslims, for example.

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Vigorously Defend the Freedoms of Religion, Belief, and Expression:

Our founding fathers, understanding the importance of freedom of religion, made it first in our Bill of Rights. In 1790, George Washington wrote to a synagogue in Rhode Island, that this country will give “to bigotry no sanction, to persecution no assistance.”

Rather than seek prohibitions on offensive expression, the United States advocates for other measures such as urging political, religious, and societal leaders to speak out and condemn offensive expression; creating a mechanism to identify areas of tension between communities; training government officials on outreach strategies; and encouraging leaders to discuss causes of discrimination and potential solutions with their communities. Indeed, we believe that laws seeking to limit freedom of expression in the name of protecting against offensive speech are actually counterproductive. The suppression of speech often actually raises the profile of that speech, sometimes giving even greater voice to speech that others might find offensive. In some countries, politicians will not condemn offensive speech, but instead will defer to the courts to judge if it is legally prohibited. In our view it is far more effective if political leaders know that they cannot point to the law as an excuse for doing little to nothing. They have a moral and political obligation to use their own freedom of expression to lead a strong counter effort, and should be held to account politically.

As I have said before no country is immune from the problems of intolerance and hatred, but governments can and must respond in ways that promote the human rights of all individuals. Here in this room where consensus and unity was achieved, I wish to conclude by thanking you for this opportunity. I hope that together we will move forward to achieve the substantial goal of combating religious intolerance, discrimination and violence.

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(2) General Assembly resolution

On November 15, 2011, the United States joined consensus on a resolution adopted by the Third Committee of the UN General Assembly on combating intolerance, negative stereotyping, stigmatization, discrimination, and incitement to violence against persons, based on religion or belief. The resolution was adopted by the General Assembly by consensus, without a vote, on December 19, 2011. U.N. Doc. A/RES/66/168. U.S. Deputy Representative Sammis provided an explanation of the U.S. position on the resolution,

excerpted below and available at

<http://usun.state.gov/briefing/statements/2011/178683.htm>.

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The U.S. is pleased to join consensus on this resolution. We congratulate the sponsors of this resolution for what we hope is becoming a blueprint for constructive, meaningful actions that States and the international community will take to promote respect for religious differences. We are glad that the landmark consensus reached at the Human Rights Council in Geneva on this issue has also taken hold here. We have for some years shared the stated concerns of the sponsors and others about intolerance, discrimination and violence directed against persons on the basis of their religion and belief. It is deeply concerning that these problems persist in the 21st century in all regions of the world.

As was also true in Geneva, the U.S. had not been able to support previous efforts of the sponsors to address these very real and serious problems in this body because those efforts relied in great measure on seeking to impose restrictions on expression as a means to combat intolerance, discrimination and violence based on religion or belief. Not only do we believe such restrictions are wrong and violate freedoms of expression and religion; we also are convinced that they are counterproductive and exacerbate the very problems they ostensibly seek to address. We have seen in various parts of the world how laws that criminalize offensive expression have been misused by governments and to persecute political opponents and minorities. In some cases those who have engaged in religiously motivated violence or murder have pointed to such laws as justification for their actions.

The resolution being adopted today, however, follows the path set by the landmark HRC resolution 16/18 and provides for criminalization of expression in only one circumstance—incitement to imminent violence. It calls upon states to take different types of measures to counter all other forms of offensive expression, ranging from education and awareness building to interfaith efforts to urging political, religious and societal leaders to speak out and condemn offensive expression. The resolution specifically recognizes that the most effective antidote to offensive expression is more expression and the “open public debate of ideas,” not laws that restrict expression in the name of tolerance. The approach taken by this resolution is one that upholds respect for universal human rights.

The resolution calls for measures to prohibit discrimination and invidious profiling, and calls upon states to enforce those prohibitions effectively. The resolution also calls on states to implement laws to prohibit hate crimes against persons, which are violent crimes such as harassment, assault, property destruction, or even murder, motivated by, among other things, bias based on religion or belief. And it expressly recognizes the importance of providing all adherents of religions or beliefs equal protection of the law. The United States welcomes all international, national, and regional initiatives that respect universal human rights and that recommend these types of measures to promote interfaith harmony and combating discrimination against individuals on the basis of religion or belief. Such initiatives can promote respect for religious diversity in a manner that respects universal human rights.

Mr. Chairman, each of us has a lot of work to do to turn the actions recommended in this resolution into reality. To succeed, the approach outlined here must be more than words on paper

in a UN resolution. It must be a call to action for each of our governments to take assertive, concrete measures to uphold its international obligations and to promote awareness and understanding of the sensitive issues the resolution addresses. In July, to help ensure that this call to action is implemented, Secretary Clinton co-chaired a Ministerial meeting with OIC Secretary General Ihsanoglu in Istanbul to promote implementation of the actions called for in HRC Resolution 16/18. We look forward to the series of implementation meetings that begin next month, the outcome of which will be shared with relevant UN offices, such as the OHCHR. In line with these implementation efforts, the United States urges member states to heed the call in the resolution to provide updates on the efforts they are making in this regard as part of ongoing reporting to OHCHR.

We wish to extend our appreciation to all delegations who have worked in a constructive spirit of dialogue and mutual understanding in order to reach this result. We remain committed to trying to ensure that this positive approach becomes the basis for joint efforts to make the promise of this resolution a reality around the world.

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(3) The “Istanbul Process” to implement Resolution 16/18

On July 15, 2011, Secretary Clinton met with Secretary General of the Organization of Islamic Cooperation (“OIC”) Ekmeleddin Ihsanoglu along with other foreign ministers in Istanbul as part of a high-level meeting on combating religious intolerance. As co-chairs of the meeting, Secretary Clinton and the secretary general of the OIC issued a “Joint Statement on Combating Intolerance, Discrimination, and Violence Based on Religion or Belief,” set forth below and also available at www.state.gov/r/pa/prs/ps/2011/07/168653.htm. The meeting and joint statement launched what has become known as the “Istanbul Process” for implementation of Human Rights Council Resolution 16/18.

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The Secretary of State of the United States, the Secretary General of the Organization of Islamic Cooperation, and the EU High Representative for Foreign Affairs, together with foreign ministers and officials from Australia, Belgium, Canada, Denmark, Egypt, France, Germany, Italy, Japan, Jordan, Lebanon, Morocco, Pakistan, Poland, Romania, Senegal, Sudan, Turkey, United Kingdom, the Vatican (Holy See), UN OHCHR, Arab League, and African Union, met on July 15 in Istanbul to give a united impetus to the implementation of UN Human Rights Council Resolution 16/18 on “Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against persons based on religion or belief.” The meeting was hosted by the Organization of Islamic Cooperation at the OIC/IRCICA premises in the historic Yildiz Palace in Istanbul and co-chaired by the OIC Secretary-General H.E Prof. Ekmeleddin Ihsanoglu and U.S. Secretary of State H.E. Mrs. Hillary Rodham Clinton.

They called upon all relevant stakeholders throughout the world to take seriously the call for action set forth in Resolution 16/18, which contributes to strengthening the foundations of

tolerance and respect for religious diversity as well as enhancing the promotion and protection of human rights and fundamental freedoms around the world.

Participants resolved to go beyond mere rhetoric and to reaffirm their commitment to freedom of religion or belief and freedom of expression by urging States to take effective measures, as set forth in Resolution 16/18, consistent with their obligations under international human rights law, to address and combat intolerance, discrimination, and violence based on religion or belief. The co-chairs of the meeting committed to working together with other interested countries and actors on follow up and implementation of Resolution 16/18 and to conduct further events and activities to discuss and assess implementation of the resolution. Participants are encouraged to consider to provide updates, as part of ongoing reporting to the Office of the High Commissioner for Human Rights, on steps taken at the national level on the implementation of Resolution 16/18, building also on related measures in the other resolutions adopted by consensus on freedom of religion or belief and on the elimination of religious intolerance and discrimination.

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Secretary Clinton delivered remarks at the high-level meeting in which she elaborated on steps the U.S. would take to implement Resolution 16/18. Her remarks, excerpted below, are available at www.state.gov/secretary/rm/2011/07/168636.htm.

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I want to applaud the Organization of Islamic Conference and the European Union for helping pass Resolution 16/18 at the Human Rights Council. I was complimenting the secretary general on the OIC team in Geneva. I had a great team there as well. So many of you were part of that effort. And together we have begun to overcome the false divide that pits religious sensitivities against freedom of expression, and we are pursuing a new approach based on concrete steps to fight intolerance wherever it occurs. Under this resolution, the international community is taking a strong stand for freedom of expression and worship, and against discrimination and violence based upon religion or belief.

These are fundamental freedoms that belong to all people in all places, and they are certainly essential to democracy. But as the secretary general just outlined, we now need to move to implementation. The resolution calls upon states to protect freedom of religion, to counter offensive expression through education, interfaith dialogue, and public debate, and to prohibit discrimination, profiling, and hate crimes, but not to criminalize speech unless there is an incitement to imminent violence. We will be looking to all countries to hold themselves accountable and to join us in reporting to the UN's Office of the High Commissioner of Human Rights on their progress in taking these steps.

For our part, I have asked our Ambassador-at-Large for Religious Freedom, Suzan Johnson Cook, to spearhead our implementation efforts. And to build on the momentum from today's meeting, later this year the United States intends to invite relevant experts from around the world to the first of what we hope will be a series of meetings to discuss best practices, exchange ideas, and keep us moving forward beyond the polarizing debates of the past; to build

those muscles of respect and empathy and tolerance that the secretary general referenced. It is essential that we advance this new consensus and strengthen it, both at the United Nations and beyond, in order to avoid a return to the old patterns of division.

The Human Rights Council has given us a comprehensive framework for addressing this issue on the international level. But at the same time, we each have to work to do more to promote respect for religious differences in our own countries. In the United States, I will admit, there are people who still feel vulnerable or marginalized as a result of their religious beliefs. And we have seen how the incendiary actions of just a very few people, a handful in a country of nearly 300 million, can create wide ripples of intolerance. We also understand that, for 235 years, freedom of expression has been a universal right at the core of our democracy. So we are focused on promoting interfaith education and collaboration, enforcing antidiscrimination laws, protecting the rights of all people to worship as they choose, and to use some old-fashioned techniques of peer pressure and shaming, so that people don't feel that they have the support to do what we abhor.

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No country, including my own, has a monopoly on truth or a secret formula for ethnic and religious harmony. This takes hard work and persistence and patience. But wherever we come from and however we worship, all of us can do more in our own lives, in our positions of leadership, and in our communities, to bridge the divides that separate us. Here in Istanbul, which for so long has symbolized a bridge between cultures and continents, we have the opportunity to recommit ourselves to this goal.

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In December, the United States hosted the first of a planned series of expert-level meetings with foreign government agencies as part of the Istanbul process to further implement Resolution 16/18. The December meeting focused on effective government strategies to engage members of religious minorities and enforcing laws prohibiting discrimination on the basis of religion or belief, two elements of Resolution 16/18. Secretary Clinton delivered remarks at the meeting on December 14, 2011, which are excerpted below and available in full at www.state.gov/secretary/rm/2011/12/178866.htm. Further information about the Istanbul Process is available at www.humanrights.gov/2011/12/10/istanbul-process/.

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Now, there are those who have always seen a tension between these two freedoms, especially when one person's speech seems to question someone else's religious beliefs, or maybe even offends that person's beliefs. But the truth we have learned, through a lot of trial and error over more than 235 years in our country, is that we defend our beliefs best by defending free expression for everyone, and it lowers the temperature. It creates an environment in which you are free to exercise and to speak about your religion, whether your neighbor or someone across

the town agrees with you or not. In fact, the appropriate answer to speech that offends is more speech.

Now, in the United States, we continue to combat intolerance because it is— unfortunately, seems to be part of human nature. It is hurtful when bigotry pollutes the public sphere, but the state does not silence ideas, no matter how disagreeable they might be, because we believe that in the end, the best way to treat offensive speech is by people either ignoring it or combating it with good arguments and good speech that overwhelms it.

So we do speak out and condemn hateful speech. In fact, we think it is our duty to do so, but we don't ban it or criminalize it. And over the centuries, what we have found is that the rough edges get rubbed off, and people are free to believe and speak, even though they may hold diametrically opposing views.

Now, with Resolution 16/18, we have clarified these dual objectives. We embrace the role that free expression plays in bolstering religious tolerance. We have agreed to build a culture of understanding and acceptance through concrete measures to combat discrimination and violence, such as education and outreach, and we are working together to achieve those objectives.

Now, I know that in the world today, intolerance is not confined to any part of the world or any group of people. We all continue to deal with different forms of religious intolerance. That's true here, that's true in Europe, that's true among countries in the Organization of Islamic Cooperation, everywhere in the world. It's true where people, if they are discriminating or intimidating, they're doing it against Muslims or Jews or Christians or Buddhists or Baha'is or you name it. There has been discrimination of every kind against every religion known to man.

And yet at the same time, it's one thing if people are just disagreeing. That is fair game. That's free speech. But if it results in sectarian clashes, if it results in the destruction or the defacement or the vandalization of religious sites, if it even results in imprisonment or death, then government must ...hold those who are responsible accountable. Government must stand up for the freedom of religion and the freedom of expression. And it's a situation which is troubling to us, because a recent study by the Pew Forum on Religion and Public Life found that 70 percent of the world's population lives in countries with a high number of restrictions on religious freedom.

In America, we are proud of our long and distinctive record of championing both freedom of speech and freedom of religion, and we have worked to share our best practices. But I have to say we have one difficulty in understanding all of the problems that we see around the world, and that is that because religion is so personal and because it is something that we highly value in ourselves, it strikes us as troubling that people are not confident in their religious beliefs to the point where they do not fear speech that raises questions about religion.

I mean, every one of us who is a religious person knows that there are some who may not support or approve of our religion. But is our religion so weak that statements of disapproval will cause us to lose our faiths? That would be most unfortunate. In fact, what we have found, in study after study, is that the United States is one of the most religious countries in the world. And yet anybody can believe anything and go anywhere. And so there is no contradiction between having strong religious beliefs and having the freedom to exercise them and to speak about them and to even have good debates with others.

And so the United States has made a commitment to support the 16/18 implementation efforts, but we also would hope that we can take practical steps to engage with members of religious minority groups. We know that antidiscrimination laws are no good if they're not

enforced, and if they're not enforced equally, we know that governments which fear religion can be quite oppressive, but we know that societies which think there's only one religion can be equally oppressive.

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(4) *Letter to the Editor from Assistant Secretary Posner and Ambassador Cook*

After an op-ed piece appeared in *Forbes* magazine on December 30, 2011 that was critical of the United States' support for Resolution 16/18, Assistant Secretary Posner and Ambassador Cook responded in a letter to the editor. The letter appears below and is available at www.forbes.com/sites/abigaillesman/2011/12/30/could-you-be-a-criminal-us-supports-un-anti-free-speech-measure/3/.

* * * *

[Abigail R. Esman](#)'s Dec. 30, 2011 op-ed, "[Could You Be a Criminal? US Supports UN Anti-Free Speech Measure](#)," mistakenly states that U.N. Human Rights Council Resolution 16/18 seeks to limit speech that is discriminatory or involves the "defamation" of religion.

First, the resolution does not accept the approach espoused in the "defamation of religions" resolutions, which the United States has opposed for more than a decade. The U.S. Commission on [International Religious Freedom](#) declared Resolution 16/18 to be a "significant step away from the pernicious 'defamation of religions' concept."

Second, the resolution calls for prohibition of speech in only one area—the criminalization of incitement to imminent violence. The concept of barring incitement to imminent violence tracks U.S. Supreme Court jurisprudence, specifically the 1969 *Brandenburg v. Ohio* decision, which held that only in very narrow circumstances can speech be limited. The Court said that "constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." Subsequent U.S. case law has reaffirmed this ruling and made clear that, under *Brandenburg*, the government may only restrict free speech when it is specific in its call for violence (or other lawless action) and specifies an imminent timeframe. This test has been the U.S. standard for over 40 years and does not, as Esman writes, place "limitations as well on speech considered 'blasphemous.'"

Contrary to Esman's claims, drawing a caricature of the prophet Muhammad that resulted in violence by Muslim extremists would not constitute "incitement to imminent violence" under the *Brandenburg* test. The incitement to imminent violence test does not provide a heckler's veto; an individual who finds something insulting may not restrict another's freedom of expression. Authorities may react to speech that is likely to produce imminent violence, not mere advocacy of violence or provocative speech. Therefore, Esman is not correct in claiming that by supporting criminalization of incitement to imminent violence, the United States has "agreed not to provoke." The United States was following and promoting its own constitutional standard, as it has been doing in regards to freedom of expression in international fora since the time of Eleanor Roosevelt.

We champion broad protections for freedom of expression and religion for all in the United States and throughout the world.

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M. PROMOTION OF HUMAN RIGHTS DURING THE ARAB SPRING

See discussion in sections A.3.d. and A.3.e. *supra* regarding actions taken to respond to the human rights crises in Libya and Syria. On June 3, 2011, at the 17th Session of the Human Rights Council, U.S. delegate John Mariz delivered a statement for the United States that echoed a May 19, 2011 speech delivered at the State Department by President Obama responding to developments in the Middle East and North Africa, the so-called “Arab Spring.” Daily Comp. Pres. Docs., 2011 DCPD No. 00368. Both the statement and the speech emphasized the support of the United States for promoting universal human rights, including free speech and freedom of assembly and association. Excerpts of the President’s speech appear below. ***

* * * *

The State Department is a fitting venue to mark a new chapter in American diplomacy. For 6 months, we have witnessed an extraordinary change taking place in the Middle East and North Africa. Square by square, town by town, country by country, the people have risen up to demand their basic human rights. Two leaders have stepped aside. More may follow. And though these countries may be a great distance from our shores, we know that our own future is bound to this region by the forces of economics and security, by history and by faith.

* * * *

The question before us is what role America will play as this story unfolds. For decades, the United States has pursued a set of core interests in the region: countering terrorism and stopping the spread of nuclear weapons, securing the free flow of commerce and safe-guarding the security of the region, standing up for Israel’s security and pursuing Arab-Israeli peace.

We will continue to do these things, with the firm belief that America’s interests are not hostile to people’s hopes, they’re essential to them. ...

Yet we must acknowledge that a strategy based solely upon the narrow pursuit of these interests will not fill an empty stomach or allow someone to speak their mind. Moreover, failure to speak to the broader aspirations of ordinary people will only feed the suspicion that has festered for years that the United States pursues our interests at their expense. Given that this mistrust runs both ways, as Americans have been seared by hostage-taking and violent rhetoric

*** Editor’s note: Other portions of the President’s May 19 speech appear in Chapter 17.A.

and terrorist attacks that have killed thousands of our citizens. A failure to change our approach threatens a deepening spiral of division between the United States and the Arab world.

And that's why, 2 years ago in Cairo, I began to broaden our engagement based upon mutual interests and mutual respect. I believed then, and I believe now, that we have a stake not just in the stability of nations, but in the self-determination of individuals. The status quo is not sustainable. Societies held together by fear and repression may offer the illusion of stability for a time, but they are built upon fault lines that will eventually tear asunder.

So we face a historic opportunity. We have the chance to show that America values the dignity of the street vendor in Tunisia more than the raw power of the dictator. There must be no doubt that the United States of America welcomes change that advances self-determination and opportunity. Yes, there will be perils that accompany this moment of promise. But after decades of accepting the world as it is in the region, we have a chance to pursue the world as it should be.

Of course, as we do, we must proceed with a sense of humility. It's not America that put people into the streets of Tunis or Cairo, it was the people themselves who launched these movements, and it's the people themselves that must ultimately determine their outcome.

Not every country will follow our particular form of representative democracy, and there will be times when our short-term interests don't align perfectly with our long-term vision for the region. But we can, and we will, speak out for a set of core principles, principles that have guided our response to the events over the past 6 months.

The United States opposes the use of violence and repression against the people of the region.

The United States supports a set of universal rights. And these rights include free speech, the freedom of peaceful assembly, the freedom of religion, equality for men and women under the rule of law, and the right to choose your own leaders, whether you live in Baghdad or Damascus, Sanaa or Tehran.

* * * *

Mr. Mariz's statement at the 17th Session of the Human Rights Council making reference to President Obama's May 19 speech follows and is available at <http://geneva.usmission.gov/2011/06/03/item-3-promotion-of-human-rights/>.

* * * *

Two weeks ago, in a speech about the recent changes throughout the Middle East and Northern Africa, President Obama reiterated the support of the United States for human rights and fundamental freedoms, including free speech, the freedom of peaceful assembly, freedom of religion, equality for men and women under the rule of law, and the right to choose leaders. President Obama also reaffirmed that these principles are universal rights—to be enjoyed by all persons, regardless of where they live.

Indeed, the events of the last six months reinforce how important respect for human rights is to the stability of any society. Societies held together by fear and repression may offer the illusion of stability for a time, but they are built upon fault lines that will eventually tear

asunder. There can be no stability where peaceful protestors are met with violence and repression from their governments. Nor can there be stability when opposition leaders and human rights defenders are arbitrarily imprisoned. In order to resolve legitimate grievances and address legitimate aspirations, there must be an opportunity to engage in dialogue with the government, and there cannot be a real dialogue when parts of the peaceful opposition are in jail.

The protection and promotion of human rights, while intrinsically important, also encourage long-term stability by ensuring free and fair elections, a vibrant civil society, accountable and effective democratic institutions, and responsible regional leadership. Respect for human rights also provides space for the kinds of political and economic reforms that help meet the legitimate aspirations of ordinary people—by increasing transparency and accountability in government, and by enabling the economic growth and broad-based prosperity that are necessary to democratic transition.

It is essential that human rights protections be extended to all members of society. We too often see situations where some individuals, instead of receiving protection from their governments, become the targets of violence. We deplore all instances in which people are subjected to violence due to such factors as race, gender, religious beliefs, ethnicity, disability, health status or sexual orientation. We call on all governments to vigorously defend the human rights of all persons.

President Obama made it clear that support for these universal principles is not a secondary interest for the United States. Rather, it is a top priority that must be translated into concrete action. That task of translating these principles into action remains the primary work of this Council. In this body, we have the same moment of opportunity that President Obama set before the United States—the opportunity to pursue the world, not as it is, but as it should be.

It is in this spirit that we look forward to working with other Members to advance the Council's mandate—"promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind, and in a fair and equal manner."

* * * *

On November 7, 2011, Secretary Clinton reinforced President Obama's message of support for people around the world exercising their universal and fundamental human rights in a speech at the National Democratic Institute ("NDI"). Secretary Clinton's speech is excerpted below and available in full at www.state.gov/secretary/rm/2011/11/176750.htm.

* * * *

... Do we really believe that democratic change in the Middle East and North Africa is in America's interest? That is a totally fair question. After all, transitions are filled with uncertainty. They can be chaotic, unstable, even violent. And, even if they succeed, they are rarely linear, quick, or easy.

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And yet, as President Obama said at the State Department in May, "It will be the policy of the United States to promote reform across the region and to support transitions to

democracy.” We believe that real democratic change in the Middle East and North Africa is in the national interest of the United States. And here’s why.

We begin by rejecting the false choice between progress and stability. For years, dictators told their people they had to accept the autocrats they knew to avoid the extremists they feared. And too often, we accepted that narrative ourselves. Now, America did push for reform, but often not hard enough or publicly enough. And today, we recognize that the real choice is between reform and unrest.

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...[O]pening political systems, societies, and economies is not simply a matter of idealism. It is a strategic necessity. But we are not simply acting in our self-interest. Americans believe that the desire for dignity and self-determination is universal—and we do try to act on that belief around the world. Americans have fought and died for these ideals. And when freedom gains ground anywhere, Americans are inspired.

So the risks posed by transitions will not keep us from pursuing positive change. But they do raise the stakes for getting it right. Free, fair, and meaningful elections are essential—but they are not enough if they bring new autocrats to power or disenfranchise minorities. And any democracy that does not include half its population—its women—is a contradiction in terms. Durable democracies depend on strong civil societies, respect for the rule of law, independent institutions, free expression, and a free press. ...

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Fundamentally, there is a right side of history. And we want to be on it. And—without exception—we want our partners in the region to reform so that they are on it as well. Now, we don’t expect countries to do this overnight, but without reforms, we are convinced their challenges will only grow. So it is in their interest to begin now.

These questions about our interests and consistency merge in a third difficult question: How will America respond if and when democracy brings to power people and parties we disagree with?

We hear these questions most often when it comes to Islamist religious parties. Now, of course, I hasten to add that not all Islamists are alike. Turkey and Iran are both governed by parties with religious roots, but their models and behavior are radically different. There are plenty of political parties with religious affiliations—Hindu, Christian, Jewish, Muslim—that respect the rules of democratic politics. The suggestion that faithful Muslims cannot thrive in a democracy is insulting, dangerous, and wrong. They do it in this country every day.

Now, reasonable people can disagree on a lot, but there are things that all parties, religious and secular, must get right—not just for us to trust them, but most importantly for the people of the region and of the countries themselves to trust them to protect their hard-won rights.

Parties committed to democracy must reject violence; they must abide by the rule of law and respect the freedoms of speech, religion, association, and assembly; they must respect the rights of women and minorities; they must let go of power if defeated at the polls; and in a region with deep divisions within and between religions, they cannot be the spark that starts a conflagration. In other words, what parties call themselves is less important to us than what they

actually do. We applaud NDI for its work to arrive at a model code of conduct for political parties across the political spectrum and around the globe. We need to reinforce these norms and to hold people accountable for following them.

In Tunisia, an Islamist party has just won a plurality of the votes in an open, competitive election. Its leaders have promised to embrace freedom of religion and full rights for women. To write a constitution and govern, they will have to persuade secular parties to work with them. And as they do, America will work with them, too, because we share the desire to see a Tunisian democracy emerge that delivers for its citizens and because America respects the right of the Tunisian people to choose their own leaders.

* * * *

And that brings me to my next question: What is America's role in the Arab Spring? These revolutions are not ours. They are not by us, for us, or against us, but we do have a role. We have the resources, capabilities, and expertise to support those who seek peaceful, meaningful, democratic reform. And with so much that can go wrong, and so much that can go right, support for emerging Arab democracies is an investment we cannot afford not to make.

Now, of course, we have to be smart in how we go about it. For example, as tens of millions of young people enter the job market each year, we recognize that the Arab political awakening must also deliver an economic awakening. ...

We also have real expertise to offer as a democracy, including the wisdom that NDI has gleaned from decades of working around the globe to support democratic transitions. Democracies, after all, aren't born knowing how to run themselves.

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The United States does not fund political candidates or political parties. We do offer training to parties and candidates committed to democracy. We do not try to shift outcomes or impose an American model. We do support election commissions, as well as nongovernmental election monitors, to ensure free and fair balloting. We help watchdog groups learn their trade. We help groups find the tools to exercise their rights to free expression and assembly, online and off. And of course we support civil society, the lifeblood of democratic politics.

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In Tunisia, Egypt, and Libya, we are working to help citizens safeguard the principles of democracy. That means supporting the forces of reconciliation rather than retribution. It means defending freedom of expression when bloggers are arrested for criticizing public officials. It means standing up for tolerance when state-run television fans sectarian tensions. And it means that when unelected authorities say they want to be out of the business of governing, we will look to them to lay out a clear roadmap and urge them to abide by it.

Where countries are making gradual reforms, we have frank conversations and urge them to move faster. It's good to hold multi-party elections and allow women to take part. It's better when those elections are meaningful and parliaments have real powers to improve people's lives. Change needs to be tangible and real. When autocrats tell us the transition to democracy will take time, we answer, "Well, then let's get started."

And those leaders trying to hold back the future at the point of a gun should know their days are numbered. ...

* * * *

This brings me to my last and perhaps most important point of all. For all the hard questions I've asked and tried to answer on behalf of the United States, the most consequential questions of all are those the people and leaders of the region will have to answer for themselves. Because ultimately, it is up to them. It is up to them to resist the calls of demagogues, to build coalitions, to keep faith in the system even when they lose at the polls, and to protect the principles and institutions that ultimately will protect them. Every democracy has to guard against those who would hijack its freedoms for ignoble ends. Our founders and every generation since have fought to prevent that from happening here. The founding fathers and mothers of Arab revolutions must do the same. No one bears a greater responsibility for what happens next.

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N. FREEDOM OF ASSEMBLY AND ASSOCIATION

In June, at the 17th Session of the Human Rights Council, the United States joined in a decision to convene a panel discussion at the 18th session on “promotion and protection of human rights in the context of peaceful protests.” U.N. Doc. No. A/HRC/RES/17/120. The panel was held at the 18th session in September. At that session, Ambassador Donahoe delivered a statement for the United States delegation urging governments to protect the right to peaceful protests:

As we have witnessed the dramatic events unfolding in parts of North Africa and the Middle East, we again call upon governments to promote and protect human rights in the context of peaceful protests—thus honoring obligations that are clearly reaffirmed as universal in the [Vienna Declaration and Program of Action]. We are deeply troubled by the continued use of violence by some governments to quash universal rights to freedom of expression and peaceful assembly. We strongly condemn brutal methods of silencing dissent, which include shooting unarmed peaceful demonstrators and the use of torture. We encourage all states to renew their commitments to upholding the human rights and fundamental freedoms of all people.

Ambassador Donahoe's statement is available in full at <http://geneva.usmission.gov/2011/09/27/vdpa-item18/>.

O. HUMAN RIGHTS AND COUNTERTERRORISM

On March 7, 2011, the United States Delegation to the 16th Session of the Human Rights Council delivered a statement in the interactive dialogue with the special rapporteur for torture and the special rapporteur for the protection of human rights while countering

terrorism. The excerpts below from the U.S. statement, which is available in full at <http://geneva.usmission.gov/2011/03/07/interactive-dialogue-on-torture-and-protection-of-human-rights-while-countering-terrorism/>, address the “Best Practices” recommended by the special rapporteur for the protection of human rights while countering terrorism.

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We would also like to thank Special Rapporteur Scheinin for his most recent and final report on the promotion and protection of human rights and fundamental freedoms while countering terrorism. We thank him for his tireless work to promote and protect human rights, not only in his tenure as the first Special Rapporteur to hold this post, but throughout his career as well.

As the Special Rapporteur’s work illustrates, countering terrorism is a global challenge, which calls for states to be vigilant and creative, receptive to new ideas, and diligent in ensuring that measures taken to prevent and combat terrorism comply with their obligations under applicable international law.

The Special Rapporteur’s report suggests ten areas of best practice. As the Special Rapporteur notes, recommendations for best practices are not legal obligations and thus may go beyond what is required by international law or practiced by most states. Furthermore, in this most challenging of areas, no one approach or singular set of practices will necessarily apply in all situations. We agree with the Special Rapporteur’s assessment that Member States must consider best practices in a manner that is consonant with the fundamental principles of their various legal systems. As such, the practices suggested by the Special Rapporteur should not be considered as the sole means by which states can effectively counter terrorism while respecting human rights. We thank the Special Rapporteur for his devotion to upholding the human rights of all people, including victims of terrorism, and extend to him our best wishes as his particular mandate comes to a close.

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Cross References

Suspending entry into the U.S. of human rights abusers, Chapter 1.C.4.

Extradition of fugitive alleging fear of torture, Chapter 3.A.3.

Trafficking in persons, Chapter 3.B.3.

International, hybrid, and other tribunals, Chapter 3.C.

U.S. objections to Pakistan's reservations to ICCPR and CAT, Chapter 4.A.

Alien Tort Statute and Torture Victim Protection Act, Chapter 5.B.

Guidelines for multinational enterprises relating to conflict minerals, Chapter 11.F.2.

Climate change, Chapter 13.A.1.

U.S. sanctions regarding Iran and human rights, Chapter 16.A.2.b.(2)(iii)

U.S. sanctions concerning threats to democratic processes, Chapter 16.A.6.

Israeli-Palestinian conflict, Chapter 17.A.

Conflict with al-Qaida and operation against Usama bin Laden, Chapter 18.A.1.a.(2)

International humanitarian law, Chapter 18.A.1.c.

Detainees at Guantanamo and in Afghanistan, Chapter 18.A.3.